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September 8, 2015

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Hon. David Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway
Suite 300, MS TB-06
Tacoma, WA 98402-4454

Re: Supreme Court No. 92189-0 - Personal Restraint Petition of Alexis J. Schlottmann

Clerk and Counsel:

On August 19, 2015, the Petitioner's "PERSONAL RESTRAINT PETITION" was received. By notation ruling I have authorized the filing of the petition without prepayment of the filing fee. The personal restraint petition has been assigned the above referenced Supreme Court cause number.

On August 19, 2015, the Petitioner's "MOTION TO FILE OVER LENGTH PETITIONER'S BRIEF" was also received. The motion is referred to Division II of the Court of Appeals.

Pursuant to RAP 16.5, effective September 1, 2014, the personal restraint petition is transferred to Division II of the Court of Appeals. A copy of RAP 16.5 is enclosed for the Petitioner. A scanned copy of the personal restraint petition and motion to file over length Petitioner's brief are enclosed for the Clerk of the Court of Appeals.

Sincerely,

Susan L. Carlson
Supreme Court Deputy Clerk

SLC:mt

Separate enclosures as stated

CoA Div. II No [redacted]
Thurston County Superior Court No. 11-101815-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN THE COURT OF APPEALS, DIVISION TWO, OF THE STATE OF WASHINGTON

92189-0

In re the Personal Restraint of

Alexis J. Schlottmann,

Petitioner

PERSONAL RESTRAINT PETITION

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I. STATUS OF THE PETITIONER

In 2011, the petitioner, Alexis Schlottmann, was convicted of multiple felonies in Thurston County Superior Court, each of which related to three separate burglaries committed over a 24 hour period. Ms. Schlottmann was sentenced to a substantial prison term which she is still serving now at the Washington State Corrections Center for Women. She files this PRP, challenging the lawfulness of her confinement based upon these convictions, as further elaborated below.

II. STATEMENT OF THE CASE

A. THE JAPHET BURGLARY

The Japhet residence, owned by Donald and Lisa Japhet, was burglarized on November 17, 2011. Mr. and Mrs. Japhet both testified that he did not see who broke his front door, who entered his home, or who removed the stolen items from inside of it.[1]

No one was home when the burglary occurred, and none of his neighbors reported seeing any suspicious people near his home at the time of the burglary.[2] Mr. Japhet testified he first learned of the burglary when

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[1] 3RP 198 (Mr. Japhet testimony)
[2] 3RP 208.

he came home from work and saw that his front door was "wide open" and someone had "wrecked" his front door and the deadbolt to gain entry.[3]

After searching through his home, Mr. Japhet noticed that several items were missing. Those items included a computer, a helmet camera, jewelry,[4] and financial documents relating to Mr. Japhet's small business, Japhet Bulkheading.[5] Mr. Japhet testified that he owned about six or eight guns in the home, but none of them were missing. Mr. Japhet estimated approximately $2,736 worth of property had been stolen during the burglary.[6]

Deputy Paul McHugh was the responding officer to the scene.[7] Deputy McHugh noticed that the damage to the door "could" have been caused by "some sort of pry tool."[8] He also testified that this type of forced entry is common in burglaries and *not* "unusual." In fact, he said that "it is fairly common that a violent break-in is done by damage to a door."[9]

Deputy McHugh testified about his investigation at the scene. When asked about whether it would have been helpful to have found fingerprint

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[3] 3RP 197-98.

[4] 3RP 200.

[5] 3RP 202. Mr. Japhet and his three brothers own a construction company called Japhet Bulkheading. 3RP 194.

[6] 3RP 205.

[7] 3RP 219-20. (Deputy McHugh Testimony)

[8] 3RP 221. (Deputy McHugh Testimony)

[9] 3RP 225.

evidence, especially where there is no evidence of who entered the home, such as eye-witness testimony.[10] Deputy McHugh admitted however, that he made no attempts to "lift any fingerprints or anything like that to try to advance the investigation,"[11] including the door or handle that the burglars entered the home through.[12] The reason he gave was essentially that lifting finger prints was too much work, so he decided against it.[13]

Sergeant Odegaard testified that he eventually located Mr. Japhet's stolen checkbook after speaking with another deputy about an unrelated burglary.[14] Deputy Westby told him that he had arrested Lockard and Ms. Schlottman in an unrelated burglary (the Finely burglary) and found the checkbook inside Lockard's vehicle when he searched it.[15] Deputy Westby later testified at trial that the found the checkbook associated with Mr. Japhet's name associated in the driver's side door of the van and that no items associate with the name Japhet were found in the passenger area of the car.[16]

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10 3RP 225. Even if an eyewitness does identify one suspect, Deputy McHugh testified, fingerprint evidence can help police identify potential accomplices. Just because an eyewitness only sees one burglar, does not, as Deputy McHugh testified, "That doesn't necessarily mean that [she's] the only person" who "was inside" the home. 3RP 225.

11 3RP 223. (Deputy McHugh Testimony)

12 3RP 226.

13 3RP 227.

14 3RP 215, 218. (Sergeant Odegaard Testimony)

15 3RP 218. (Sergeant Odegaard Testimony)

16 1RP 60-61 (Deputy Westby Testimony)

B. THE WINKLEMAN BURGLARY

Mr. Winkelman also testified regarding the burglary of his home. He stated that on November 18, 2011, he returned home from work and noticed that the side door to his garage was pried open.[17] He also noticed that the lock on a box in the garage was removed and the contents of the box were missing.[18] One of his credit cards was also missing.[19]

Deputy Anthony Adams responded to Winkleman's call for assistance and observed what appeared to be splintering in the door jam and some marks there were consistent with forced entry.[20] Deputy Adams took pictures of the damage and unsuccessfully attempted to lift fingerprints from a couple of chairs.[21] However, it was unclear from the record whether the attempt to lift prints was unsuccessful because they were not of good enough quality to run or they came back from a test without any match to a particular person in the system.

Detective Simper found a credit card with the last name "Winkelman" on it. The detective testified that it was found underneath "one of the front seats" of the car, but again, had no idea which seat. [22] In

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[17] 3RP 329.
[18] 3RP 329.
[19] 3RP 334.
[20] 3RP 301.
[21] 3RP 303.
[22] 3RP 241. (Detective Simper Testimony)

addition, he found a decorative knife set and a jar containing loose coins.[23] The detective then pulled the Winkelman burglary report, which occurred on same day as the Finely burglary, approximately 4 miles away.[24] Detective Simper contacted Mr. Winkelman, who explained that a jar with the word "Atlas" on the side, a large D-cell Maglite, and a decorative knife set were taken from his residence.[25] Mr. Winkleman went to the police station and examined the evidence locker.[26] He identified several items as his, including boxes from Bali, foreign from Bali and Malaysia, a set of knives, a flashlight, a coin jar, and several other items that he did not previously realize were missing.[27] Still, there were other items taken from Mr. Winkleman's house that were not found in the minivan.[28] The property found in the minivan was only a fraction of what was taken from the Winkleman home.[29]

C. THE FINELY BURGLARY

Emily McMason, one of Finely's neighbors, testified for the State, telling the jury that she witnesses both Lockard and Schlottmann break into

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[23] 3RP 240-241. 3RP 334.
[24] 3RP 241, 245.
[25] 3RP 242, 246.
[26] 3RP 335-336.
[27] 3RP 335-336.
[28] 3RP 339.
[29] 3RP 340.

the Finely residence on November 18, 2011, disappear inside of it, and leave ten minutes later with what looked like items stolen from inside the residence. McMason's attention was drawn to the two women when she noticed them arrive at the Finely residence. McMason testified that she did not recognize their vehicle—a dark green Mazda minivan driven and owned by Lockard[30]—and saw it pull into Finely's driveway.[31]

McMason saw Lockard exit the minivan, holding a piece of paper in her hand, and approach the front door.[32] Lockard then knocked on the front door, but no one answered. [33] McMason testified that Lockard began walking around the home, peering into the windows and carefully observing her surroundings.[34] Lockard then walked back to the minivan to retrieve a crowbar.[35]

Ms. McMason told the jury that she observed a second woman—whom she later identified as Ms. Schlottmann—emerge from the passenger side of the minivan.[36] Ms. Schlottmann then followed Lockard who was walking back towards the residence carrying the crowbar, and the two

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30 It was undisputed at trial that the minivan belonged to Arron Davis, Lockard's husband.
31 3RP 35-36.
32 3RP 77.
33 3RP 77.
34 3RP 78.
35 3RP 79.
36 3RP 79.

eventually disappeared inside the home.[37] Ms. McMason then called 911 and told the 911 operator about the suspicious activity and describing the vehicle and both of the women.[38]

About ten minutes later, Ms. McMason saw the two women walk out the front door carrying various items back to the minivan. Ms. Schlottmann returned to the minivan holding a stack of papers, and the driver (Lockard) returned with a large bag with an item conspicuously protruding out of the bag.[39] McMason watched the two carry these items, and then get back into the minivan and drive away.[40]

Ten minutes later, several Thurston County Deputies, including Deputy Brian Brennan, arrived at the scene to investigate the burglary.[41] Deputy Brennan interviewed Ms. McMason who detailed her observations about the burglary.

Ms. McMason described the two burglars and Lockard's minivan. This information was relayed to another officer who detained the two women in the minivan a few blocks away from the burglary.[42]

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[37] 3RP 79; 3RP 82-83.
[38] 3RP 83.
[39] 3RP 84.
[40] 3RP 85.
[41] 3RP 87.
[42] 3RP 33-36, 91. Deputy Westby responded to the traffic stop and arrested Lockard when police learned that she was driving on a suspended license. 3RP 35.

McMason was then transported to that location where she identified Lockard and Ms. Schlottmann as the two women who burglarized the Finely residence.[43] That same day, Deputy Westby executed a search warrant on Lockard's minivan and inventoried the items that may have related to the Finley burglary.[44]

McMason eventually identified the crowbar found in Lockard's minivan as the same one that was used to break into the Finely residence. Ms. Finely identified numerous pieces of property that were stolen from her home, including her .32 caliber pistol,[45] a pair of scissors[46] and $2,000 in cash[47] After Ms. Finely claimed ownership of the firearm, it was soon taken out of evidence and then released back to Ms. Finely. Detective Simper then went back to Finely's home on December 21, 2011, and seized it again as evidence.[48]

D. LOCKARD'S MINIVAN, HER BUSINESS LICENSE, AND THE "DYNAMIC DUO"

Donald Davidson, testified about an encounter he had with a woman he couldn't later identify, but was most likely Lockard. Davidson, one of

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[43] 3RP 38.
[44] 3RP 39.
[45] 2RP 170; 3RP 43, 170-171.
[46] 2RP 171 (
[47] 2RP 174
[48] 3RP 265.

Ms. Finely's neighbors, testified that Detective Simper interviewed him December 21, 2011[49] during which he described an incident that occurred prior to the Finely burglary, involving a woman who fit Lockard's description.[50] The incident included a woman coming to Mr. Davidson's front door, apparently advertising her cleaning business[51] and leaving a promotional flier that read, "The dynamic duo, your handyman alternative."[52] Davidson declined the offer, but kept the piece of paper, which was eventually introduced into evidence at trial.[53] Notably, the flier had the name "Darlene", Lockard's first name, written on the front. Neither Ms. Schlottmann's first nor last name appeared anywhere on that document. Moreover, the phone number listed on the flier belonged to that of Ms. Lockard. Nothing on that flier was connected to Ms. Schlottmann.[54]

Though Mr. Davison claimed that the woman who came to his door was with someone, the person remained in the passenger seat of the car (which he could only describe as a "car" in his testimony[55]) and Donaldson

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49 3RP 183 (Donaldson testimony)

50 3RP 182. Though Donaldson that woman who approached her was "quite tall," looked like she was about 30 years old and "perhaps" younger than Ms. Schlottmann. *Id.* at 185.

51 3RP 181.

52 3RP 182.

53 3RP 181.

54 2RP 283

55 2RP 180.

could not even recall if that other person was a man or a woman.[56] Donaldson was given a photomontage with Ms. Schlottmann depicted in it, but could not identify Ms. Schlottmann as the same person who came to his house that day, admitting that he "did not recognize anyone" in any of the pictures, including Ms. Lockard.[57]

Later, police found more of those fliers inside the Lockard minivan, along with a business license under the name of "The Dynamic *Dual*."[58] That business license, just like the car, was in Ms. Lockard's name, with no mention of Ms. Schlottmann.[59] Detective Simper testified that "the connection [between] all three of these burglaries is the Mazda MVP," but then quickly conceded that the minivan was registered to "Aaron Davis, Lockard's husband, who told Detective Simper that Lockard had permission to drive the MVP.[60] There was no evidence that Ms. Schlottmann was inside the vehicle prior to the Finely burglary on November 18, 2011.

E. THE MOTION TO DISMISS

After the State rested, the defense moved to dismiss Counts VI, VII, VIII, IX, X, XI, and XII—all of which all related to the Japhet and

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56 3RP 185.
57 3RP 184-85 (Donaldson testimony)
58 3RP 248.
59 3RP 283 (Detective Simper Testimony)
60 3RP 272-74

Winkleman burglaries—because there was insufficient evidence to prove that Ms. Schlottmann was guilty of any of those charges, either as an accomplice or a principal.[61] As a result, the defense concluded, even taking the evidence in the light most favorable to the State, there is not sufficient evidence . . . on those burglaries and the thefts and malicious mischiefs" to submit those charges to the jury.[62] In a brief ruling, the court denied the defense motion to dismiss. The court said that it believed "it would be error if I dismissed" Counts VI through XIII "for the reasons the State has articulated."[63]

F. VERDICT & SENTENCING

After the court denied the defense motion to dismiss, the case went to the jury on 12 of the charged 13 counts.[64] The jury returned verdict of guilty on all of them.[65] At sentencing, the court granted the defense's motion to merge[66] one of Ms. Schlottmann's convictions—finding that entering conviction for Second Degree Theft (Count 11) and Second Degree PSP (Count 12), both of which alleged the same victim, Donald Japhet—

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61 3RP 343-44.
62 3RP 344.
63 3RP 345.
64 CP at 117.
65 CP at 117.
66 RP 454 (citing *State v. Hancock*, 44 Wn. App. 297, 302, 721 P.2d 1006, 1008 (1986).

would violate double jeopardy and must be merged.[67] Though the court granted the defense's motion to "merged" those two counts, it still failed to reduce Ms. Schlottmann's offender score, which was already above 9 points (based entirely on her current offenses).[68]

The trial court imposed a sentence of 96 months followed by 18 months of community custody.[69]

G. DIRECT APPEAL

Ms. Schlottmann filed a timely appeal of these convictions.[70] In that appeal, she asked this Court to grant her a new trial because following errors denied her a fair trial: "errors based on a partial jury, ineffective assistance of counsel, and prosecutorial misconduct."[71] This court, in an unpublished opinion, rejected each of these arguments.[72]

III. PRP PROCEDURAL ISSUES

A. THE PETITION IS NOT BARRED AS SUCCESSIVE

Several provisions of Washington case law, statutes, and rules bar successive claims under certain circumstances. None of them apply here. This is Ms. Schlottmann's first collateral attack on her conviction in this

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67 RP 454 (citing *Hancock*, 44 Wn. App. 297)
68 RP 459.
69 CP at 122.
70 *State v. Schlottmann*, 181 Wn. App. 1034 (2014)
71 *State v. Schlottmann*, 181 Wn. App. 1034 (2014)
72 *See id.*

case, so RAP 16.4(d) does not apply. For the same reasons, RCW 10.73.140, which limits the jurisdiction of the Court of Appeals over some successive petitions, does not apply.[73] This petition is not barred by any of the rules prohibiting successive PRPs.

B. THE PETITION IS TIMELY

RCW 10.73.090(1) gives a defendant one year—measured from the date the judgment becomes final—to file a collateral attack on his conviction or sentence.[74] Here, Ms. Schlottmann's conviction became final when the court of appeals filed its mandate on August 13, 2014. This PRP, filed on the date indicated in the certificate of service, was one year from that date; this PRP is therefore timely.

C. EVIDENCE OFFERED IN SUPPORT OF PRP

The court rules require a petitioner to make a preliminary, non-speculative showing that he is entitled to relief. This requires the petitioner to state the facts underlying his claim(s) of unlawful restraint and the evidence available to support the factual allegations.[75] Here, Ms. Schlottmann relies upon the following evidence in support of her petition:

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[73] RCW 10.73.140
[74] RCW 10.73.090.
[75] RAP 16.7(a)(2)(i).

(1) the record from Ms. Schlottmann's direct appeal, and (2) the unpublished opinion of this court denying that appeal.

IV. ARGUMENTS IN SUPPORT OF RELIEF

An appellate court must grant a PRP petitioner relief if he can show that his conviction or sentence subjects him to unlawful restraint.[76] This requires a petitioner to prove (1) that his conviction or sentence "unlawful" due to a specific legal error,[77] and (2) that this legal error prejudiced him.[78] To show unlawful restraint, Ms. Schlottmann must allege a legal error or errors that make her conviction or sentence unlawful within the meaning of RAP 16.4(c). This definition includes, for example, any conviction or sentence that was "entered," "obtained," or "imposed" in violation of the Constitution or any other "laws of the State of Washington."[79] As discussed in more detail below, Ms. Schlottmann alleges the following legal errors,

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[76] RAP 16.4(a); RAP 16.4(b); "Restraint" includes current incarceration, collateral consequences of conviction, or any other "disability" caused by the conviction. *In re Martinez*, 171 Wash. 2d 354, 362, 256 P.3d 277, 281 (2011). Here, the petitioner, who was convicted of numerous felonies and is still currently serving her sentence on those convictions. She is, therefore, still subject to both the direct and collateral consequences of those convictions and is clearly under restraint. *See id.*

[77] RAP 16.4 (c); A "ground" is merely a legal claim for relief. *See In re Pers. Restraint of Jeffries*, 114 Wash.2d 485, 488–89, 789 P.2d 731 (1990) (discussing the meaning of "grounds for relief").

[78] *In re Brockie*, 178 Wash.2d 532, 539, 309 P.3d 498, 503 (2014).

[79] RAP 16.4 (c).

each of which are proper constitutional grounds for relief under RAP 16.4(c).[80]

A. MS. SCHLOTTMANN'S CONVICTION FOR FIRST DEGREE BURGLARY (COUNT I) VIOLATES DUE PROCESS BECAUSE THERE IS INSUFFICIENT EVIDENCE FROM WHICH A RATIONAL JURY COULD FIND THAT MS. SCHLOTTMANN OR LOCKARD WERE "ARMED WITH A FIREARM" DURING THE FINLEY BURGLARY.

1. Standard of Review

Due Process requires the State prove every fact, beyond a reasonable doubt, that is necessary to prove the charged crime.[81] To prove first degree burglary, Due Process requires the State to prove that the defendant or an accomplice either assaulted someone or armed themselves with a deadly weapon during the course of the charged burglary.[82]

Here, as charged in Count (the Finely Burglary), this required the State to prove that Ms. Schlottman or Lockard both (1) possessed a firearm and (2) was "armed" with that firearm.[83] Importantly, Ms. Schlottman does

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80 *See In re Pers. Restraint of Martinez,* 171 Wash.2d 354, 364, 256 P.3d 277 (2011) ("A conviction based on insufficient evidence contravenes the due process clause of the Fourteenth Amendment and thus results in unlawful restraint.") *In re Hopkins*, 137 Wn.2d 897, 976 P.2d 616 (1999) (conspiracy, crime to which defendant pleaded guilty, was not subject to doubling of maximum penalty under uniform controlled substances act). *State v. Klinger*, 96 Wn.App. 619, 980 P.2d 282 (1999) (PRP raised ineffective assistance of trial counsel, who did not bring motion to suppress);

81 *State v. Green,* 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980); *Jackson v. Virginia* 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).

82 RCW 9A.52.020; *See In re Martinez*, 171 Wn. 2d 354, 364, 256 P.3d 277, 283 (2011).

83 *See* RCW 9A.52.020. "A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight

not dispute that one of them took a firearm from the home.[84] Instead, Ms. Schlottman argues here that the evidence was insufficient as a matter of law, to prove that she or Lockard was "armed" with that firearm, a necessary element that must be proved to convict her of First Degree Burglary.[85]

Due Process requires this court to test the sufficiency of the evidence by asking "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."[86] A party challenging the sufficiency of evidence admits the truth of the evidence and any reasonable inferences from it.[87]

"[W]hether a person is armed is a mixed question of law and fact."[88] If no material facts are in dispute, this court must "determine whether

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therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person." *Id.*

84 *Cf. In re Martinez*, 171 Wn. 2d 354, 364, 256 P.3d 277, 283 (2011) (holding that the evidence was insufficient to prove that Martinez was armed with a deadly weapon when the weapon was a knife—which unlike a firearm is not a per se deadly weapon—and no evidence suggested that Martinez used the knife in a way that made it "readily capable of causing death or substantial bodily harm," as required by RCW 9A.04.110(6)).

85 *See State v. Brown*, 162 Wn.2d 422, 430, 432, 173 P.3d 245 (2007) (holding that the evidence was insufficient to prove that either Brown or his accomplice was "armed with a firearm" as required to prove first degree burglary, even though one of the burglars clearly possessed a firearm inside the burglarized home).

86 *State v. Green,* 94 Wash.2d 216, 221, 616 P.2d 628 (1980) (emphasis omitted) (quoting *Jackson,* 443 U.S. at 319, 99 S.Ct. 2781).

87 *State v. Johnson,* 173 Wn.2d 895, 900, 270 P.3d 591 (2012).

88 *State v. Schelin*, 147 Wn. 2d 562, 565-66, 55 P.3d 632, 634-35 (2002)

[those] facts are sufficient, as a matter of law, to prove that [the defendant] was armed."[89]

2. The evidence is insufficient to prove that there was a nexus been the crime charged—burglary—and the *use or intended use* of the firearm stolen from the Finely residence.

One is "armed" with a deadly weapon if, it is "readily available for use," either offensively or defensively, during the commission of the crime.[90] These purposes include using the weapon "to facilitate the commission of the crime, escape from the scene of the crime, protect contraband or the like, or prevent investigation, discovery, or apprehension by the police."[91] A defendant or an accomplice is not so armed, however, merely because he or she is in constructive possession of the weapon,[92] or in close proximity to the weapon.[93]

Instead, there must be a nexus between the weapon and the crime.[94] To establish such a nexus in a case like this one—"where the weapon *is not actually used* in the commission of the crime"—there must be enough evidence from which the jury can infer that the weapon was *"there to be*

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89 *See State v. Schelin*, 147 Wn. 2d 562, 565-66, 55 P.3d 632, 634-35 (2002)

90 *State v. Valdobinos,* 122 Wash.2d 270, 282, 858 P.2d 199 (1993)).

91 *State v. Gurske,* 155 Wn.2d 134, 139, 118 P.3d 333 (2005).

92 *Simonson*, 91 Wn. App. at 882-83 (citing *State v. Mills,* 80 Wash.App. 231, 235-36, 907 P.2d 316 (1995)).

93 *Simonson*, 91 Wn. App. at 882-83 (*citing Valdobinos*, 122 Wash.2d at 282).

94 *State v. Gurske*, 155 Wn. 2d 134, 142, 118 P.3d 333, 338 (2005)

used." [95] In *Brown*, the Court clarified what this meant in *Brown* in its holding that, "as a condition in the nexus requirement," the jury must be able to find that the defendant or an accomplice displayed an "intent or willingness to use the [firearm]."[96]

This is a fact-specific inquiry that requires the court to examine the record before the trier of fact, including "the nature of the crime, the type of weapon, and the circumstances under which the weapon is found (e.g., whether in the open, in a locked or unlocked container, in a closet on a shelf, or in a drawer)."[97]

In *Schelin*, for example, there was sufficient evidence to allow the jury to conclude that the defendant, who was running an on-going illegal marijuana grow in his basement, was armed with a firearm, where he kept

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[95] *State v. Brown*, 162 Wn. 2d 422, 434, 173 P.3d 245, 251 (2007); *State v. Neff*, 163 Wn.2d 453, 462, 181 P.3d 819 (2008) (quoting *State v. Gurske*, 155 Wn.2d 134, 138, 118 P.3d 333 (2005))

[96] *Brown*, 162 Wash.2d at 433 (rejecting the dissent's argument that "inquiry into the defendant's intent or willingness to use the rifle is a condition in the nexus requirement that does not appear in any of this court's prior cases."). Even jthe decent conceded that this required "a new condition to the nexus requirement, holding that [the required nexus] is not satisfied unless there is evidence that the defendant intended to or was willing to use the weapon in furtherance of the offense." *Id.* at 438 (Madsen, J., dissenting).

[97] *Id.* (citing Schelin, 147 Wash.2d at 570). Here, the first two factors—the nature of the crime, burglary, and the type of weapon, a firearm—do not tell us much about whether the Legislature intended its definition of "armed" to reach Ms. Schlottmann's conduct in this case. *See Brown*, 162 Wn. 2d at 432 (finding no nexus when defendant committed a residential burglary by entering a home, without a deadly weapon, even though Brown or his accomplice possessed a firearm inside the home). Whether the Legislature intended such a result in this case, is not evident from the crime itself—as it would be with felony harassment or felony assault with a firearm—therefore turns on "the circumstance under which the weapon was found." *Id.*

a loaded firearm near the grow operation where it could have been easily accessed to protect the on-going crime, and he stood near the firearm as police entered his home. From these facts, the Court held, the jury "was entitled to infer he was using the weapon to protect his basement marijuana grow operation" and, therefore, that "Schelin was 'armed.' "[98]

Similarly inn *Eckenrode*, the Court again found a sufficient nexus between an on-going marijuana grow and two loaded firearms found in close proximity to the grow operatkon. In that case, the Court held that the record contained sufficient facts where "the defendant told the 911 operator he was holding a loaded weapon, a police scanner was found in the home, and there was pervasive evidence that much of the house was used for drug production."[99]These facts, the Court held, provided "ample evidence from which a trier of fact could find Easterlin was armed to protect the drugs."[100]

Despite its holding, however, the Court recognized in dicta that there are certainly cases in which the jury could reasonably find that a defendant possessed a firearm during a felony but was not "armed" within the meaning of the statute because the "connection between the weapon and the crime" was lacking.[101] The court gave several such examples, all of which turned

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98 *State v. Schelin*, 147 Wn. 2d 562, 574, 55 P.3d 632, 634-35 (2002)
99 *State v. Eckenrode*, 159 Wn. 2d 488, 495, 150 P.3d 1116, 1119 (2007)
100 *Id,* at 210.
101 *Id.* at 209-10.

on the defendant's purpose for possessing the weapon, such as a defendant who carries (a) a sword for religious purposes, (b) "a kitchen knife in a picnic basket," or (c) "a .22 riffle in a gun rack" belonging to a farmer or hunter.[102]

In *Brown*, on the other hand, the Court found that insufficient evidence supported the finding that Brown or an accomplice was armed with a firearm during the course of the robbery, despite clear evidence that one of them possessed the firearm during the course of the burglary.[103] After observing that, consistent with its previous holdings, "that the defendant's intent or willingness to use [a firearm] is a condition of the nexus requirement that does, in fact, appear in Washington cases"

> No evidence exists that Brown or his accomplice handled the rifle on the bed at any time during the crime in a manner *indicative of an intent or willingness to use it in furtherance of the crime. In fact, Hill's testimony indicates that the weapon here was regarded as nothing more than valuable property*."[104]

Thus, the court held, that the only reasonable inference from this record was that Brown or his accomplice had only possessed the firearm with the intent to commit theft:

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[102] *Id,* at 209.

[103] *Brown,* 162 Wash.2d at 430, 432.

[104] *State v. Brown*, 162 Wn. 2d 422, 432, 173 P.3d 245, 249 (2007)

> Here the facts suggest that the weapon was merely loot, and not there to be used. Evidence that the rifle was briefly in a burglar's possession, without more, does not make Brown armed within the meaning of the sentencing enhancement statutes. [105]

This case is nothing like *Schelin* and *Eckenrode* and indistinguishable from *Brown* in all material respects. First, here, just as in *Brown*, no rational jury could have found that Ms. Schlottmann or her accomplice intended regarded the stolen firearm as anything other than "loot" from the burglary. As the concurrence pointed out in *Brown*, calling a defendant armed when the gun is not used to facilitate the crime but is instead merely the object of the crime robs the term "armed" of any meaningful nexus between the defendant, the crime, and the weapon. It also robs the term of its actual meaning.[106]

Here, unlike in *Schelin* and *Eckenrode*, it was certainly reasonable to infer that each defendant was intentionally placed their firearms in close proximity to their on-going illegal grow operations so they would be available for defensive purposes, i.e. to protect the grow operations from thieves or police. Common knowledge tells us that such operations are frequently subject to theft, and the long, continuous nature of those crimes

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105 *Id.* at 434.

106 *Brown*, 162 Wn.2d at 436 (Sanders, J., concurring).

makes it more likely that the defendants would have feared detection by police or theft.

Those inferences, however, simply fail here, where, like in *Brown*, there was no evidence that anyone involved in the Finely burglary intended or was willing to use the stolen firearm in furtherance of the crime. Instead, the evidence establishes only that the firearms were the object of the crime and merely "loot."

Second, here, just as in *Brown*, none of the Legislatures "key reasons" for punishing "armed criminals" more harshly are applicable here.[107] The statutes were directed at deterring criminals from "[f]orcing the victim to comply with their demands," "injuring or killing anyone who tries to stop the criminal acts," and "aiding the criminal in escaping."[108] But here, no facts even suggests that any of these reasons were why Ms. Schlottmann or her accomplice stole the firearm from the Finely residence. For example, neither Ms. Schlottmann nor her accomplice ever reached for the gun when arrested, nor did they have it on their person at that time, as if to use it against police, i.e. to effectuate an escape. Such a finding would be pure

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107 *Brown*, 162 Wn. 2d at 432.

108 *Brown*, 162 Wn. 2d at 432 (citing Laws of 1995, ch. 129, § 1(1)(b) (Initiative Measure No. 159)).

speculation at best and insufficient to support the finding that Ms. Schlottmann or her accomplice was armed as required by *Brown*.

In the end, this case is indistinguishable from *Brown*, because these relevant circumstances, considered in totality, "does not support a conclusion that [Ms. Schlottmann or her accomplice] was "armed" as intended by the legislature."[109] Without this nexus between the defendants, the firearms, and the crime, the evidence is insufficient to sustain the convictions for first degree burglary and conspiracy to commit first degree burglary or the firearm enhancements associated with those offenses.

When the record lacks insufficient evidence to prove the charged crime, the normal remedy is reversal and dismissal of the conviction.[110] Here, however, the jury was instructed on a lesser included offense, Residential Burglary, and the jury's verdict clearly supports the remaining elements of that charge. Thus, the appropriate remedy is to vacate Ms. Schlottmann's conviction for first degree burglary with orders to enter a conviction on the lesser offense and resentence her.[111]

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109 *Brown*, 162 Wn. 2d at 432.

110 *Green*, 94 Wn.2d at 221.

111 *See In re Pers. Restraint of Heidari*, 174 Wash.2d 288, 293–94, 274 P.3d 366 (2012) (noting that remand for resentencing on the lesser included is the proper remedy unless the jury was not explicitly instructed on lesser included offense).

B. THE EVIDENCE WAS INSUFFICIENT TO PROVE ANY THAT MS. SCHLOTTMANN COMMITTED RESIDENTIAL BURGLARY AS CHARGED IN COUNT 9 (THE JAPHET RESIDENCE) OR AS CHARGED IN COUNT 6 (THE WINKLEMAN RESIDENCES).

A person is guilty of residential burglary, as defined by RCW 9A.52.025(1), if he unlawfully enters or remains in a dwelling with the intent to commit a crime once inside.[112] For both counts 9 (Japhet) and 6 (Winkleman), the jury had to find either (a) that Ms. Schlottmann unlawfully entered or remained inside both of the residences (principal liability), or (b) that Ms. Schlottmann acted as an accomplice to someone who unlawfully entered or remained in those residences (accomplice liability).[113]

Here, the State failed to prove either that Ms. Schlottmann acted as a principal or an accomplice to either the Japhet or Winkleman burglaries.

3. Principal Liability

Principal liability requires the State to prove different facts than those required to prove accomplice liability.[114] When the charge is burglary, the State must prove that the defendant charged, rather than someone else,

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112 RCW 9A.52.025(1) (the crime must be one against "a person" or "property")

113 3RP 359 (emphasis added).

114 In general, "to be a principal one must consciously share in a criminal act and participate in its accomplishment." *State v. Gladstone*, 78 Wn. 2d 306, 311, 474 P.2d 274, 277 (1970).

actually entered the burglarized residence.[115] Unlawful entry, like any other element, can be proved by circumstantial evidence.[116]

Here, the evidence is insufficient to prove, *beyond a reasonable doubt*, that Ms. Schlottmann ever entered the Japhet or Winkleman residences. As defense counsel argued in his motion to dismiss, the State presented "no testimony" and "no physical evidence that [even] puts Ms. Schlottmann at the scene" of either burglary, let alone inside either of the burglarized residences. Further, neither Ms. Schlottmann or Lockard made any "admissions . . . that she [Ms. Schlottmann] was at [the Japhet or Winkleman residences]."[117]

The only evidence that connects Ms. Schlottmann to the Japhet or Winkleman burglaries was the stolen item police located in Ms. Lockard's van after Ms. Schlottmann and Lockard were arrested. But, Washington Courts have consistently held that possession of stolen property, without more, is insufficient to prove that someone unlawfully entered someone one's property. In *Mace*, the Supreme Court reversed a second degree

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115 *State v. Mace*, 97 Wn.2d 840, 843, 650 P.2d 217, 219 (1982) (dismissing conviction for burglary based upon principal liability burglary where State failed to prove that defendant actually entered the residence).

116 *State v. McDaniels,* 39 Wn.App. 236, 240, 692 P.2d 894 (1984) (inferring defendant's criminal intent from circumstantial evidence); *State v. Couch,* 44 Wn.App. 26, 29–30, 720 P.2d 1387 (1986). In general, "to be a principal one must consciously share in a criminal act and participate in its accomplishment." *State v. Gladstone*, 78 Wn. 2d 306, 311, 474 P.2d 274, 277 (1970).

117 3RP 344.

burglary conviction where the only evidence, the defendant's possession of recently stolen bank cards, was insufficient to support a conclusion that Mace entered the premises.[118]

Here, just as in *Mace*, no rational jury could find that Ms. Schlottmann actually entered the Japhet residence because the State failed to provide corroborating evidence to the stolen checkbook in the driver's side door of the Mazda MPV. The same is true for the Winkleman property. No evidence, apart from the stolen property found in Lockard's van, would allow a rational juror to conclude that Ms. Schlottmann, rather than someone else, actually entered either the Japhet or Winkleman residences.

No one testified that they saw Ms. Schlottmann at the residence when the burglaries occurred. The police made no attempts to gather fingerprints or DNA evidence to the inside of the homes. Finally, the van in which the stolen items were found did not even belong to Ms. Schlottmann.

The evidence, even viewed in the light most favorable to the State, falls to allow a rational juror to conclude that Ms. Schlottmann ever entered the Japhet or Winkleman residences.

a) The Japhet Residence

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[118] State v. Mace, 97 Wn.2d 840, 843, 650 P.2d 217, 219 (1982). Similarly, in *Q.D.*, the Supreme Court held that the possession of recently stolen goods, without other corroborative evidence, was insufficient to support a conviction of first degree criminal trespass. *State v. Q.D.*, 102 Wn.2d 19, 28, 685 P.2d 557, 563 (1984).

Mr. and Mrs. Japhet testified that, when they came home on November 17, 2011, they found the place ransacked, with the door to the house broken off its hinges. Police also testified that it appeared that the perpetrator of this crime had most likely used a perpetrator had used some sort of "pry tool" to break into the residence.[119] Finally, while inside the home, the perpetrator stole several items, including the checkbook for Japhet Bulkheading, a computer, a helmet camera, and some jewelry.

From this evidence the jury could certainly infer that someone had entered the house unlawfully, and that they had done so to commit a crime against property once inside: theft. However, the discovery of the checkbook in the driver's side door of Ms. Lockard's van and the "pry marks" on the Japhet door were the only evidence that the State presented to the jury to consider as evidence that either women (as a principal or an accomplice) entered the Japhet home on November 17, 2011, one day before being arrested for the Finely burglary.

b) The Winkleman Residence

The evidence linking Ms. Schlottmann to the Winkleman burglary is equally lacking. Ms. Schlottmann and Lockard were seen burglarizing the Winkleman residence at approximately 12:20 P.M. and arrested a short time

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[119] 2RP 222.

thereafter. But, no one saw who burglarized the Winkleman residence on November 18, 2011.

The Winklemans reported the burglary to police at approximately 5:00pm that day, almost five hours after Ms. Schlottmann had been arrested. The State's argued that Ms. Schlottmann and Lockard burglarized the Winkleman residence sometime before burglarizing the Finely residence. But no rational jury could make such an inference without guessing in light of the other undisputed evidence before it.

Mr. Winkleman testified that he had returned home around 11:45am on November 18, 2011 for his lunch hour and when he left around 1:00 P.M. he didn't know his home had been burglarized.[120] By the time Mr. Winkleman had left his home at 1:00PM, Ms. Schlottmann was already seen burglarizing the Finely residence and was then arrested almost immediately thereafter. It would have, therefore, been physically impossible for her to burglarize the Winkleman residence after 1:00 PM as Mr. Winkleman testified that he had reported to police.

Moreover, the property found in the minivan was only a fraction of what was taken from the Winkleman home.[121] So for the State's theory to hold any water, the two women would have had to make a stop in between

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[120] 3RP 341.
[121] 3RP 340.

the two burglaries and rid themselves of only some of the property taken from the Winkleman residence before heading on to the Finely residence.

Last, the State argued the plausibility of their theory because Mr. Winkleman simply didn't notice that his home had been burglarized when he returned home from lunch, because the only evidence of a break in was the damage to a door that connected to the garage.[122] Mr. Winkleman testified that he might have been mistaken when he told the officer that the burglary occurred sometime after he had returned home for lunch because all the "drawers were put back in," "[i]t wasn't like somebody trashed the place," "[i]t was all just very methodical," "it was clean".[123] This line of questioning was an attempt to improve the plausibility of the State's timeline, but it also added more reasonable doubt to the State's theory in two ways: 1) Mr. Winkleman's admission that it was plausible he didn't notice that his home had been burglarized when he returned home for lunch on November 18, 2011, also meant that he might not have been aware he had been burglarized before November 18, 2011. It could have just as easily been the case that he was burglarized days before November 18, 2011. That would more reasonably explain why only a fraction of the Winkleman property was recovered from the van that afternoon, but it would also mean

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[122] 3RP 343.
[123] 3RP 342.

that the State had no evidence that Ms. Schlottmann, or even Ms. Lockard, entered the Winkleman residence. 2) The State's theory was that these two women were the two women (as principals or accomplices) entered each of these homes because property from each of the homes was found in the minivan and the method of entry was the same in each burglary. However, in the Winkleman case, the burglar went through the home so "clean" and "methodically" that Mr. Winkleman does not know when the burglary actually occurred, while in the other two burglaries, the residences were trashed and looted for possible valuable goods.

What's shockingly unreasonable about this inference being sufficient to prove this element beyond a reasonable doubt is that the testimony of Deputy McHugh regarding his investigation of the Japhet burglary demonstrated that the use of tools to pry open doors in a manner similar to that that occurred in the Japhet burglar was fairly common in break-ins.[124] So the fact that the Japhet door was pried open by some sort of tool similar to a crow bar was not similar just to the use of the crow bar by Ms. Schlottmann and Ms. Lockard to burglarize the Finely residence but is similar to the usual burglary investigated by the police. Moreover, the prosecutor for the State characterized the Japhet burglary as "your average

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[124] 2RP 224-225

burglary" when asking Deputy McHugh why he neglected to even attempt to lift fingerprints from inside the home in an effort to identify the perpetrators.[125] So without an idiosyncratic *modus operandi* to attribute to Ms. Schlottman to put her inside the Japhet home the day before she was arrested for the Finely burglary, no eye-witness testimony putting her or Ms. Lockard or the Lockard van near the Japhet home, no fingerprints lifted from within the Japhet home to put her or Ms. Lockard inside the Japhet home, no GPS records from Ms. Schlottman's cell phone or Ms. Lockard's cell phone putting them in the immediate vicinity of the Japhet home, no admissions of such from either women, the jury could not have reasonably found beyond a reasonable doubt that either women were inside the Japhet home

Mr. Don Japhet testified that he did not recognize either woman from previous encounters nor did he see them in his house on the day of the alleged residential burglary.[126] The State did not provide any direct or circumstantial evidence that either women or Ms. Lockard's van had been seen near the property on or around the date of the burglary. The State used testimony of Sergent Deputy Odegaard to imply that because the door of the Japhet home was pried open by a "pry bar-type thing" the day before

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[125] 2RP 222.
[126] 2RP 208.

the Japhet Bulkheading checkbook was found in the driver's side door of Ms. Lockard's van, that the burglary of the Japhet home and the Finely home were committed by the same people.[127] However, the discovery of the checkbook in the driver's side door of Ms. Lockard's van[128] was the only evidence that the State presented to the jury to consider as evidence that either woman entered the home on November 17, 2011. Moreover, the unreasonableness of such an inference was further buffered by the testimony of Deputy McHugh when he testified that the use of tools to pry open doors in a manner similar to that that occurred in the Japhet burglary was fairly common in break-ins.[129] Even Don Japhet testified that the sheriff who came out to investigate recognized the markings on the door and said "I get a couple of these a day, the same pry marks."[130] Moreover, the prosecutor for the State characterized the Japhet burglary as "your average burglary" when asking Deputy McHugh why he neglected to attempt to lift fingerprints from inside the home to identify the perpetrators.[131] So without an idiosyncratic *modus operandi* to attribute to Ms. Schlottman to put her inside the Japhet home the day before she was arrested for the Finely

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127 2RP 216.
128 1RP 60-61.
129 2RP 224-225
130 2RP 199
131 2RP222.

burglary, no eye-witness testimony putting her or Ms. Lockard or the Lockard van near the Japhet home, no fingerprints lifted from within the Japhet home to put her or Ms. Lockard inside the Japhet home, no GPS records from cell phone towers putting them in the immediate vicinity of the Japhet home, no admissions of such from either women, the jury could not have reasonably found beyond a reasonable doubt that either women were inside the Japhet home.

Though this evidence clearly establishes that *someone* entered the Japhet residence on November 17, 2011, it fails to establish, beyond a reasonable doubt, *who* entered that home. The State offered no direct evidence that Ms. Schlottman ever entered the home. The same is true of the Winkleman burglary.

2. Accomplice liability

Further, the evidence is clearly insufficient to show that Ms. Schlottmann acted as an accomplice to either the Japhet or Winkleman burglaries. A person is an accomplice if, with knowledge that it will promote or facilitate the commission of the crime, he solicits, commands, encourages, or requests another person to commit the crime, or he aids or agrees to aid another person in planning or committing it.[132] A person is not

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[132] RCW 9A.08.020(3)(a).

guilty as an accomplice unless he has associated with the venture, participating in it as something he desires to succeed.[133] To convict Ms. Schlottmann as an accomplice, the State had to prove that (1) Lockard committed the crime of residential burglary by unlawfully entering the Japhet residence intending to commit a crime inside (a completed residential burglary),[134] (2) Ms. Schlottman's conduct helped Lockard accomplice that unlawful entry (the actus), and (3) Ms. Schlottmann knew that such conduct would help Lockard unlawfully enter that home.

Although an accomplice "need not be physically present at the commission of the crime to be held guilty as a principal, his conviction depends on pr*oof that he did something in association or connection with the principal to accomplish the crime*."[135] To establish accomplice liability, there must be more than mere presence and knowledge of the criminal activity.[136]

For example, in *Dalton*, a jury found Dalton, and three codefendants, guilty of burglary after several men broke into a store and

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133 *State v. Carlisle,* 73 Wn.App. 678, 680, 871 P.2d 174 (1994); *State v. Luna,* 71 Wn.App. 755, 759, 862 P.2d 620 (1993).

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135 *State v. Gladstone*, 78 Wn. 2d 306, 312, 474 P.2d 274, 278 (1970) (emphasis added).

136 *In re Wilson,* 91 Wash.2d 487, 491, 588 P.2d 1161 (1979) (aiding and abetting requires that one associate oneself with the undertaking, participate in it as something one desires to bring about, and seek by one's action to make it succeed); *State v. Alsup,* 75 Wn.App. 128, 132 n. 4, 876 P.2d 935 (1994).

stole several items inside of it.[137] The court observed that sometime after the burglary was completed, Dalton met with a codefendant to help distribute the goods and even took some of the bounty for himself. The court observed that evidence clearly showed that Dalton "knew the goods were stolen" and that he "participated in the crime" by possessing and distributing stolen property, but the Court still dismissed his conviction. "This [evidence]," the Court held, was "far from showing a guilty connection with the crime" sufficient to make someone an accomplice (to burglary).[138]

Here, just as in *Dalton*, the defendant (Ms. Schlottmann) was found in the presence of property that had previously been stolen. However, in the present case, the only evidence that Ms. Schlottmann had knowledge that the van contained property belonging to Mr. Japhet and Mr. Winkleman was the fact that it was found in the van in which she was a passenger, and an eye-witness could identify her at the scene of another burglary (of the Finely residence). Even if the existence of the Japhet checkbook in the driver-side door of the Mazda MPV was enough to prove that Ms. Schlottman knew that Ms. Lockard had entered the Japhet residence, "Knowledge that a crime has been committed and the concealment of such

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137 State v. Dalton, 65 Wash. 663, 118 P. 829 (1911),
138 State v. Dalton, 65 Wash. 663, 118 P. 829 (1911),

knowledge does not make a witness an accomplice, unless he aided or participated in the commission of the offense." [139] Nor could a reasonable juror have found beyond a reasonable doubt that Ms. Schlottman solicited, commanded, encouraged, or requested Ms. Lockard to unlawfully enter the Japhet residence, or aid or agreed to aid Ms. Lockard in planning or committing such an act. Thus, there is even less evidence of her involvement as an accomplice to the Japhet and Winkleman burglaries as there was against Mr. Dalton in the *Dalton* case.

There was no direct or circumstantial evidence that could have led a reasonable jury to conclude beyond a reasonable doubt that Ms. Lockard unlawfully entered the Japhet residence. Unlawful entry, like any other element, can be proved by circumstantial evidence.[140] In *Q.D.*, the Supreme Court held that the possession of recently stolen goods, without other corroborative evidence, was insufficient to support a conviction of first degree criminal trespass.[141] In *Mace*, the Supreme Court reversed a second degree burglary conviction where the only evidence, the defendant's possession of recently stolen bank cards, was insufficient to support a

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[139] State v. Dalton, 65 Wash. 663, 118 P. 829 (1911),

[140] *State v. McDaniels,* 39 Wn.App. 236, 240, 692 P.2d 894 (1984) (inferring defendant's criminal intent from circumstantial evidence); *State v. Couch,* 44 Wn.App. 26, 29–30, 720 P.2d 1387 (1986).

[141] State v. Q.D., 102 Wn.2d 19, 28, 685 P.2d 557, 563 (1984).

conclusion that Mace entered the premises.[142] Here, as in *Q.D.* and in *Mace*, no rational jury could find that Ms. Lockard actually entered the Japhet residence because the State failed to provide corroborating evidence other than the checkbook belonging to Japhet Bulkheading discovered by police in the driver's side door of Mazda MPV one day after the Japhet's home was burglarized. The State did attempt to buffer the woefully insufficient direct or circumstantial evidence that Ms. Lockard entered the Japhet residence during the direct examination of Detective Cameron Simper. Detective Simper responded in the affirmative to the State's inquiry that the "common motive of entry was the prying of the doorway" and that "the way these three cases [Japhet, Winkleman, and Finely burglaries] relate are in connection to ... the property that's found in that Mazda MPV."[143] However, these "similarities" between the burglaries are innocuous. Deputy McHugh testified that the use of tools to pry open doors in a manner similar to that that occurred in the Japhet burglary was fairly common in break-ins.[144] Moreover, the prosecutor for the State characterized the Japhet burglary as "your average burglary" when asking Deputy McHugh why he

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142 State v. Mace, 97 Wn.2d 840, 843, 650 P.2d 217, 219 (1982)
143 2RP 271-272
144 2RP 224-225.

neglected to attempt to lift fingerprints from inside the home to identify the perpetrators. [145]

Finally, any evidence of the innocuous "similarities" between two burglaries—such as the fact that Lockard forced entry into the homes—is insufficient to prove that *Ms. Schlottman* actually "associated" herself with either the Japhet or Winkleman burglary. As held in *Gladston*, even if the State proves that the defendant had agreed "to commit the [charged] crime" and was "present . . . [at] the scene of the crime," proof of "modus operandi," an accomplice must still "associate himself with the venture, that he participate in it as in something that he wishes to bring about, that he seek by his action to make it succeed."[146]

Similarly, here, there was no evidence that Ms. Schlottmann participated in any way to promote the break-in or burglary of either the Winkleman or Japhet residences. First, no witnesses identified her in connection with the van, Ms. Lockard, or the Japhet residence on November 17, 2011. There was no evidence that Ms. Schlottmann knew the Japhet burglary occurred or that property from that residence was in the van because the checkbook found in the driver's side door would have been

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145 2RP 222.

146 *See State v. Gladstone*, 78 Wn. 2d 306, 311, 474 P.2d 274, 277-78 (1970) (citing Nye & Nissen v. United States, 336 U.S. 613, 619, 69 S.Ct. 766, 769, 93 L.Ed. 919 (1949)).

concealed from the view of the passenger seat. Similarly, with regard to the Winkleman property, no evidence was put forward at trial that Ms. Schlottmann entered the Winkleman residence or participated in any way to aid Ms. Lockard in entering the residence other than the fact that they were seen entering the Finely residence around 12:00 P.M. together and burglarizing the home and property from the Winkleman residence was found in the back seat of the Mazda MPV.

Further, there was no evidence presented to the jury from which it could rationally find that Ms. Schlottmann knowingly aided in these additional burglaries. First, no evidence was presented at trial that Ms. Schlottmann was seen holding the flyer or approaching homes with the flyer, the business license associated with "the Dynamic Dual" found in the Mazda MPV only referenced Ms. Lockard by name and telephone number, and the Mazda MPV containing the stolen property from the three residences was registered to Ms. Lockard's husband. Although witness Donald Davidson testified that a "car" had driven up to his home and the female that was "quite tall" handed him a flyer that advertised "the Dynamic Duo" cleaning services,[147] Mr. Davidson couldn't identify either Ms. Schlottmann or Ms. Lockard in a photomontage, he counld not identify the

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[147] 2RP 181

type of car that had driven up to his home, he couldn't tell if the person in the passenger seat of the car was a man or a woman, and he couldn't remember if this incident had occurred before or after the Finely burglary.[148] Thus, all the State was able to show was that some *people* were in the area advertising for the "Dynamic Duo" at the time either before or after the Finely burglary, one of which was a woman.

C. THE EVIDENCE WAS INSUFFICIENT TO PROVE THAT MS. SCHLOTTMANN COMMITTED MALICIOUS MISCHIEF, AGAINST THE JAPHET (COUNT VIII) AND WINKLEMAN (COUNT X) RESIDENCES.

Jury instruction no. 43 stated that "to convict the defendant of the crime of malicious mischief in the second degree as charged in count eight, each of the following three elements of the crime must be proved beyond a reasonable doubt: 1) that on or about November 17th, 2011, the defendant or an accomplice caused physical damage to the property of another, to wit, Donald Japhet, in an amount exceeding $750, 2) the defendant or an accomplice acted knowingly and maliciously, and ..."[149] The jury was instructed on accomplice liability in jury instruction no. 9, but the State's argument to the jury left it unclear whether it was arguing that Ms. Schlottmann was an accomplice or principal to the charge of malicious mischief in the second degree with regard to either the Japhet or Winkleman

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148 2RP 180-185

149 3RP 369.

properties. Count VIII alleged that, on November 17, 2011, Ms. Schlottmann committed the crime of Malicious Mischief in the Second Degree, Ms. Schlottmann or an accomplice knowingly and maliciously damaged the door to the Japhet's residence in order to enter the residence to commit the burglary.[150] Count X alleged that, on November 18, 2011, Ms. Schlottmann committed the crime of Malicious Mischief in the Second Degree, Ms. Schlottmann or an accomplice knowingly and maliciously damaged the door to the Winkleman residence in order to enter the residence to commit the burglary.[151]

To find that Ms. Schlottmann committed Malicious mischief in the second degree as charged in count VIII against the Japhet residence, the jury instructions required it to find beyond a reasonable doubt, that (1) that on or about November 17, 2011, the defendant or an accomplice caused physical damage to the property of another, (2) that the property belonged to Donald Japhet, (3) that the property damage exceeded $750, and (4) the defendant or an accomplice acting knowingly and maliciously. "Malice" requires an evil intent to annoy or injure another person[152]. Damage includes the reasonable cost of repairs to restore the damaged property to

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150 RP 367.
151 RP 367.
152 West's RCWA 9A.04.110(12).

its former condition. *State v. Gilbert*, 79 Wn.App. 383, 385, 902 P.2d 182 (1995).

To find her guilty of malicious mischief against in the second degree as charged in count X, the jury had to find, beyond a reasonable doubt, that (1) on or about November 18, 2011, the defendant or an accomplice caused physical damage to the property of another, (2) that the property belonged to Guy Winkleman, and (3) that the property damage exceeded $750, and (4) the defendant or an accomplice acting knowingly and maliciously.[153]

The property damage to the exterior doors of both the Winkleman and Japhet properties as a result of being pried open each exceeded $750.00 and went uncontested to satisfy both elements two and three with regard to both counts of malicious mischief in the second degree. However, evidence presented at trial supporting the finding of elements 1 and 4 beyond a reasonable doubt was so lacking that no reasonable juror could have found that the State met its burden of proof in either count.

1. Principal Liability

"To be a principal one must consciously share in a criminal act and participate in its accomplishment."[154] With regard to the first element,

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153 RP 367-68 (Count X)

154 *State v. Gladstone*, 78 Wn. 2d 306, 311, 474 P.2d 274, 277 (1970) (citing Pereira v. United States, 347 U.S. 1, 74 S.Ct. 358, 98 L.Ed. 435 (1954) and Roth v. United States, 339 F.2d 863 (10th Cir. 1964)).

because no reasonable jury could conclude that sufficient evidence was presented at trial to support the finding that Ms. Schlottmann had knowledge of, or was even present at either the Winkleman or Japhet burglaries, it must follow that no reasonable juror could have found that sufficient evidence existed to prove that she acted as a principal to cause the damage to either property.

The only evidence the State presented to show Ms. Schlottmann caused the damage to the Japhet and Winkleman doors was that a crowbar, the Japhet Bulkheading checkbook, and "a fraction[155]" of the property stolen from the Winkleman residence was found in the minivan that the women were driving after committing the Finely burglary. Moreover, there was no eyewitness testimony putting Ms. Schlottmann near the Japhet residence on November 17, 2011, or the Winkleman residence on November 18, 2011, no fingerprints belonging to Ms. Schlottmann were discovered in either residence, and no cell phone records were introduced at trial that could put Ms. Schlottmann near either residence. Thus, the State's argument that because she pried open the Finely door with a crowbar and was in the van containing stolen property from the Winkleman and Japhet residences is patently insufficient to prove beyond a reasonable

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155 3RP 340.

doubt that she committed the acts necessary to cause the damage to the Winkleman or Japhet residences.

In *Q.D.*, the Supreme Court held that the possession of recently stolen goods, without other corroborative evidence, was insufficient to support a conviction of first degree criminal trespass.[156] In *Mace*, the Supreme Court reversed a second degree burglary conviction where the only evidence, the defendant's possession of recently stolen bank cards, was insufficient to support a conclusion that Mace entered the premises.[157] Here, as in *Q.D.* and in *Mace*, no rational jury could find that Ms. Schlottmann damaged the Japhet and Winkleman residences by inferring that because she was in "possession" of stolen property from each residence and had committed the Finely burglary with the use of a crowbar, that she participated in the damage done to the respective properties by some purposeful and knowing act of her own without more corroborative evidence. Deputy McHugh testified that the use of tools to pry open doors in a manner similar to that that occurred in the Japhet burglary was fairly common in break-ins.[158] Even Don Japhet testified that the sheriff who came out to investigate recognized the markings on the door and said "I get

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156 State v. Q.D., 102 Wn.2d 19, 28, 685 P.2d 557, 563 (1984).
157 State v. Mace, 97 Wn.2d 840, 843, 650 P.2d 217, 219 (1982)
158 2RP 224-225

a couple of these a day, the same pry marks."[159] Moreover, the prosecutor for the State characterized the Japhet burglary as "your average burglary" when asking Deputy McHugh why he neglected to attempt to lift fingerprints from inside the home to identify the perpetrators.[160] Thus, no reasonable juror could have found beyond a reasonable doubt that Ms. Schlottmann caused the damage to the Japhet door because she was seen with Ms. Lockard using a crowbar to commit a burglary the day after the Japhet door was found pried open and the home burgled.

The only corroborative evidence linking Ms. Schlottman to the damage to the Japhet door was the Japhet Bulkheading checkbook that was found in the driver's side door of Ms. Lockard's van[161] (in which Ms. Schlottman was a passenger). As the Supreme Court held in, *Q.D.*, the possession of recently stolen goods, without other corroborative evidence, was insufficient to support a conviction of first degree criminal trespass.[162] The same logic applies to the charge of malicious mischief in the second degree, as in the present case, where the only evidence is Ms. Schlottmann's proximity to recently stolen property from the Winkleman and Japhet residences.

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159 2RP 199
160 2RP222.
161 1RP 54.
162 State v. Q.D., 102 Wn.2d 19, 28, 685 P.2d 557, 563 (1984).

2. Accomplice Liability

Although the State did not need to prove beyond a reasonable doubt that Ms. Schlottmann acted as a principal in causing the damage to the Winkleman and Japhet properties, no reasonable jury could have found that the evidence presented was sufficient to show that Ms. Schlottmann acted as an accomplice. A person is an accomplice if, with knowledge that it will promote or facilitate the commission of the crime, he solicits, commands, encourages, or requests another person to commit the crime, or he aids or agrees to aid another person in planning or committing it.[163] Although an accomplice "need not be physically present at the commission of the crime to be held guilty as a principal, his conviction depends on p*roof that he did something in association or connection with the principal to accomplish the crime*"[164] (emphasis added). To establish accomplice liability, there must be more than mere presence and knowledge of the criminal activity.[165]

No reasonable member of the jury could have found beyond a reasonable doubt that Ms. Schlottmann acted as an accomplice to someone who caused the damage to the Japhet or Winkleman properties. There is no

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163 RCW 9A.08.020(3)(a).

164 *State v. Gladstone*, 78 Wn. 2d 306, 312, 474 P.2d 274, 278 (1970) (emphasis added).

165 *In re Wilson*, 91 Wash.2d 487, 491, 588 P.2d 1161 (1979) (aiding and abetting requires that one associate oneself with the undertaking, participate in it as something one desires to bring about, and seek by one's action to make it succeed); *State v. Alsup*, 75 Wn.App. 128, 132 n. 4, 876 P.2d 935 (1994).

direct evidence such as eye-witness testimony or fingerprint evidence that would directly put either woman at the Japhet or Winkleman properties. The only circumstantial evidence provided by the State at trial was that the damage done to the properties resulted from the use of a "pry tool" [166], Ms. Schlottmann and Lockard were seen using a crowbar to break into the Finely residence, and stolen property from the Japhet and Winkleman residences were found in the van after their arrest. But even knowledge that property is stolen and participation in distributing such stolen property is insufficient to show someone is an accomplice to burglary (and necessarily malicious mischief). For example, in *Dalton*, a jury found Dalton, and three codefendants, guilty of burglary after several men broke into a store and stole several items inside of it.[167] The court observed that sometime after the burglary was completed, Dalton met with a codefendant to help distribute the goods and even took some of the bounty for himself. The court observed that evidence clearly showed that Dalton "knew the goods were stolen" and that he "participated in the crime" by possessing and distributing stolen property, but the Court still dismissed his conviction.

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166 3RP 221.

167 State v. Dalton, 65 Wash. 663, 118 P. 829 (1911),

"This [evidence]," the Court held, was "far from showing a guilty connection with the crime" sufficient to make someone an accomplice.[168]

In addition, Ms. Schlottmann was identified as the passenger in Ms. Lockard's van after their arrest of the Finely residence, which would give rise to reasonable doubt as to whether Ms. Schlottmann even knew that the Japhet residence had been burglarized because the Japhet Bulkheading checkbook was found in the driver's side door. Moreover, the State's theory that the Winkleman burglary occurred on November 18, 2011, in the hours before the Finely burglary, with the same "method of entry" as the Finely burglary, and because they were together during the commission of the Finely burglary they must have been working as accomplices to break into the Winkleman residence. Such inferences were put into significant doubt when Mr. Winkleman's original police report stated that he thought his house was broken into sometime after he had left his home around 1:00 P.M. (in which case Ms. Schlottmann and Lockard were already in police custody),[169] only a "fraction"[170] of the property stolen from the Winkleman residence was found in the van (which would mean the women would have had to have gotten rid of some of the loot from the Winkleman home in

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168 State v. Dalton, 65 Wash. 663, 118 P. 829 (1911),
169 3RP 342.
170 3RP 340.

between break-ins), and the reason why Mr. Winkleman was unsure when his home was broken into was because the burglar left the home "clean" and hadn't "trashed the place[171]" (as was the case in the Japhet and Finely burglaries).

Finally, any evidence of the innocuous "similarities" between two burglaries—such as the fact that Lockard forced entry into the homes—is insufficient to prove that *Ms. Schlottman* actually "associated" herself with the Japhet burglary. In *Gladston*, even if the State proves that the defendant had agreed "to commit the [charged] crime" and was "present . . . [at] the scene of the crime," proof of "modus operandi," an accomplice must still "associate himself with the venture, that he participate in it as in something that he wishes to bring about, that he seek by his action to make it succeed."[172]

Similarly, here, no reasonable jury could have found that commission of the burglary of the Finely residence as a co-conspirator through the use of a crowbar was sufficient to prove beyond a reasonable doubt that because the Japhet and Winkleman homes were damaged with the use of a similar tool and Ms. Schlottmann was allegedly in possession

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171 3RP 343.

172 *See State v. Gladstone*, 78 Wn. 2d 306, 311, 474 P.2d 274, 277-78 (1970) (citing Nye & Nissen v. United States, 336 U.S. 613, 619, 69 S.Ct. 766, 769, 93 L.Ed. 919 (1949)).

of some of the stolen property that she participated in causing the damage to either property.

D. THE EVIDENCE IS INSUFFICIENT TO PROVE THAT MS. SCHLOTTMANN COMMITTED 2ND DEGREE PSP, AS CHARGED IN XIII AGAINST THE WINKLEMAN RESIDENCE BECAUSE THE TRIAL COURT FAILED TO INSTRUCT THE JURY ON CONSTRUCTIVE POSSESSION, AND THE EVIDENCE FAILED TO SHOW THAT MS. SCHLOTTMANN ACTUALLY POSSESSED ANY OF THE ITEMS STOLEN FROM THIS RESIDENCE.

Count XIII alleged that on November 18, 2011, Ms. Schlottmann committed the crime of PSP in the second degree when she knowingly and unlawfully possessed the same items that she allegedly stole from the Winkleman residence, as alleged in county XIII of the First Amended Information.[173] To convict Ms. Schlottmann on that charge, jury instruction no. 48 required the jury to find *beyond a reasonable doubt* (1) that on or about November 18th, 2011, Ms. Schlottmann "or an accomplice knowingly received, retained, possessed, concealed or disposed of stolen property", (2) that Ms. Schlottmann "or an accomplice acted with knowledge that the property had been stolen," (3) that Ms. Schlottmann "or an accomplice withheld or appropriated the property to the use of someone other than the true owner or person entitled thereto, to wit, Guy Winkleman,

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[173] 3 RP at 371.

(4) that the stolen property was an access device, and (5) that any of these acts occurred in the state of Washington".[174]

Here, the evidence is insufficient to prove that Ms. Schlottmann committed possession of stolen property in the second degree of property belonging to Guy Winkleman because the trial court failed to instruct the jury on constructive possession, the evidence failed to show that Ms. Schlottmann actually possessed any of the items stolen from the residence.

Ms. Schlottman did not exert constructive possession over the stolen property found in Lockard's van merely because she was present in the passenger seat. Because she did not exercise any degree of control over the vehicle and it is unclear where the stolen property was even located inside the van, no reasonable jury could have found her guilty of possession of stolen property in the second degree. The logical conclusion, then, is that because the only evidence linking Ms. Schlottman to the Winkelman and Japhet burglaries was her presence at the Finley residence with Lockard, no reasonable jury could have found her guilty of either the Winkelman or Japhet burglaries.

Possession can be actual or constructive. Constructive possession means that the person charged had dominion and control over the stolen

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[174] 3RP 371-72 (Count XIII)

property.[175] Establishing that a passenger in a vehicle had dominion and control over contraband is a fact based inquiry.[176] In *State v. Harris*, a husband and wife were charged with possession of marijuana, which was found in the trunk of the vehicle they were in.[177] The Court held that the fact that the wife was sitting in the passenger seat and the arresting officer's statement that either the wife or husband handed him the keys was insufficient to establish constructive possession on the part of the wife.[178] The Court relied on the holding found in *State v. Liles*[179] in concluding that the officer's statement was equivocal, and therefore only a "mere scintilla" of evidence:

> When substantial evidence is present, the drawing of reasonable inferences therefrom and the doing of some conjecturing on the basis of such evidence is permissible and acceptable. . . . If, however, the necessity for conjecture results from the fact that the evidence is merely scintilla evidence, then the necessity for conjecture is fatal.[180]

Mere proximity to illegal goods is insufficient to establish constructive possession. *See, e.g., Callahan* (cigar box containing drugs found on floor between defendant and another individual sitting at a desk

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175 *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d (1969).
176 *State v. Harris*, 14 Wn. App. 414, 542 P.2d 122 (1975).
177 *Id.* at 416.
178 *Id.* at 417-18.
179 11 Wn. App. 166, 171, 521 P.2d 973 (1974).
180 *State v. Harris*, 14 Wn. App. 414, 418, 542 P.2d 122, 125 (1975).

and defendant admitted that he had handled the drugs earlier in the day insufficient to find defendant had dominion and control over drugs); *State v. McCaughey*, 14 Wn. App. 326, 541 P.2d (1975) (appellant and owner of vehicle sleeping several feet from vehicle containing stolen goods insufficient to establish constructive possession of appellant); *But see State v. Weiss*, 73 Wn.2d 372, 438 P.2d 610 (1968) (sufficient evidence showing defendant had dominion and control over premises, and therefore marijuana found in living room).

In the present case, the charging documents and the officers' testimony did not specify with any particularity where access device (in this case it was a credit card belonging to Mr. Winkleman) from the Winkleman residence was found in the van.[181] Detective Simper testified that he found the credit card "underneath one of the front seats," but not only could he not identify which seat, but this was after the van had been searched and inventoried at least two times prior and thus it's likely that these items had been moved during evidence processing.[182] Like the officer's statement in *Harris*, the evidence in Ms. Schlottmann's case indicating where the stolen property in the van was equivocal and therefore only "merely scintilla

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181 2RP 119: Testimony of Deputy Holden indicted that he and Deputy Westby were responsible for photographing and the vehicle and logging its contents. Neither deputy testified to the location of the Winkleman credit card.

182 2RP 240 (Testimony of Detective Simper).

evidence." There was no other evidence, besides the fact of the State positing Ms. Schlottmann's guilt by mere association with Lockard that was substantial in establishing Ms. Schlottmann's complicity.

Ms. Schlottman did not exercise any control over the Lockard's vehicle as the passenger. In *Callahan*, the defendant admitted that he had handled the seized drugs (which were within reaching distance) earlier in the day, but that was still not even enough to establish constructive possession. It is doubtful that Ms. Schlottmann even knew what items were stored in Lockard's vehicle, or where they were stored. On the other hand, in *Weiss*, the court found that because the defendant exercised dominion and control over the premises that drugs were found in, he was therefore had constructive possession over the drugs. Therefore, because Ms. Schlottmann did not exercise dominion and control over *Lockard's* vehicle, then it is impossible that she had constructive possession over stolen goods located in unknown areas within the van.

E. THE EVIDENCE IS INSUFFICIENT TO PROVE THAT MS. SCHLOTTMANN COMMITTED 2ND DEGREE THEFT, AS CHARGED IN COUNTS VII AND XI AGAINST THE JAPHET AND WINKLEMAN RESIDENCES.

As stated in jury instruction no. 38, to convict Ms. Schlottmann of theft in the second degree, as charged in count VII, [183] the State had to prove,

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[183] CP at 34–37; 4 RP at 4–7; 3 RP at 316.

beyond a reasonable doubt, (1) that on or about November 18, 2011, Ms. Schlottmann or an accomplice "wrongfully obtained or exerted unauthorized control over property or services of another," of "Guy Winkleman," (2) "that the property was an access device" (3) that the defendant or an accomplice intended to deprive the other person of the access device..."[184]

As stated in jury instruction no. 39, to convict Ms. Schlottmann of theft in the second degree as charged in count XI, the State had to prove, beyond a reasonable doubt, (1) "that on or about November 17, 2011, the defendant or an accomplice wrongfully obtained or exerted unauthorized control over property or services of another, to wit, Donald Japhet, or the value thereof, and (2) that the property or services exceeded $750 in value, and (3) that the defendant or an accomplice intended to deprive the other person of the property or services..."[185]

Although the jury was instructed on accomplice liability in instruction no. 9, as with all the other charges brought against Ms. Schlottmann in this case, it was unclear whether she was being charged as a principal or an accomplice for theft in the second degree with regard to the Japhet or Winkleman property.

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184 3RP 365.

185 3RP 365 (Count XI)

No reasonable jury could have found that sufficient evidence existed to convict Ms. Schlottmann of counts VII and XIII as principal or an accomplice because the State failed to bring any evidence that the Japhet checkbook found in the driver's side door was over $750 in value as was instructed to the jury in jury instruction no. 39.[186] Furthermore, no reasonable jury could have found that the state brought sufficient evidence to prove beyond a reasonable doubt that Ms. Schlottmann or "or an accomplice intended to deprive the other person of the access device[187]" because the card was found under "one of the front seats" of the Mazda van, and the state failed to show that Ms. Schlottmann as a principal or an accomplice to intend to deprive Mr. Winkleman of the credit card.[188]

First of all, with regard to jury instruction no. 39, no reasonable juror could have found that Ms. Schlottmann or any accomplice wrongfully obtained or exerted unauthorized control over the property of Donald Japhet the exceeded $750 in value. The only stolen property from the Japhet residence that was recovered was a checkbook belonging to "Japhet Bulkheading," which was found in the driver's side door[189]. There was no

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186 3RP 365.

187 3RP 364

188 2RP 240 (Detective Simper's testimony).

189 1RP 54 (Deputy Westby's testimony – he and Deputy Holden were responsible for logging evidence in the car and where it was located in the vehicle).

evidence presented at trial that the checkbook was ever used or funds removed the account. The state did not present any evidence to prove that the checkbook was valued at over $750. In Washington, value of the property is usually calculated by such forms such as market value, price tags, or cost of replacement[190]. The burden is on the prosecution to prove the amount of property stolen exceeded $750. In the present case, no evidence was provided to demonstrate that the checkbook exceeded that amount.

In the case that jury instruction no. 39 was an error and that the state intended to instruct the jury that the property stolen "was an access device,[191]" Washington's "law of the case" doctrine would require that the "instructions that are not objected to are treated as the properly applicable law...[192]" Thus, because the state provided no evidence that the checkbook found in the Mazda minivan that belonged to Donald Japhet was valued at over $750, no reasonable jury could have found this element beyond a reasonable doubt and the finding on this charge must be reversed.

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190 State v. Longshore, 141 2d 414, P.3d 1254 (2000); State v. Kleist, 126 Wash.2d 432, 895 P.2d 398 (1995).

191 At 3RP 354, Jury instruction no. 38 regarding theft in the 2nd degree of Guy Winkleman gives the "access device" instruction.

192 Robertson v. Perez, 156 Wn. 2d 33, 123 P.3d 844 (2005)

"The accomplice liability statute requires that the defendant have knowledge of "the" specific crime, and not merely any foreseeable crime committed as a result of the complicity".[193]

"Mere presence at scene of crime, even if coupled with assent to it, is not sufficient to prove complicity; state must prove that defendant was ready to assist in crime."[194] The complicity statute requires that "a defendant charged as an accomplice must have general knowledge of the charged crime in order to be convicted of that crime."[195] In order to be deemed an "accomplice," an individual must have acted with knowledge that he was promoting or facilitating the crime for which the individual was eventually charged, rather than any and all offenses that may have been committed by the principal.[196]

Jury instruction 38 required that the state prove that Ms. Schlottmann or an accomplice *intended* to deprive Mr. Winkleman of the credit card that was found under the "one of the front seats[197]" of the minivan. The only evidence presented at trial that Ms. Schlottmann could have even been aware of the Winkleman credit card being present in the

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193 State v. Stein, 144 Wash.2d 236, 27 P.3d 184 (2001).
194 State v. Luna, 71 Wash.App. 755, 862 P.2d 620 (1993).
195 In re Domingo, 155 Wash.2d 356, 119 P.3d 816 (2005).
196 State v. Carter ,119 Wash.App. 221, 79 P.3d 1168 (2003).
197 2RP 240 (Detective Simper testimony).

vehicle was the fact of its presence in the vehicle. It was not in Ms. Schlottmann's vehicle or her bag or even within her constructive possession in the passenger seat. Thus, it can be inferred that she was found guilty to this crime as an accomplice and not a principal. However, even as an accomplice, the state failed to bring sufficient evidence to prove that she acted "with knowledge that (she) was promoting or facilitating in the crime[198]" of theft in the second degree with regard to the Winkleman credit card. She was not witnessed at the Winkleman residence on or around November 18, 2011, there were no fingerprints linking her to the Winkleman residence or on any of the property stolen from the residence (or the credit card), she did not use the credit card, and it was located underneath the seat. The only argument that the state could thus make was that because she was caught with Ms. Lockard burglarizing the Finely residence, that she must have been with Ms. Lockard burglarizing the Winkleman residence or at least helped Ms. Lockard in some way deprive Mr. Winkleman of property that Ms. Schlottmann knew was stolen. However, there was no evidence that Ms. Schlottmann knew of or aided in the theft of the Winkleman credit card.

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198 State v. Carter ,119 Wash.App. 221, 79 P.3d 1168 (2003).

In the case that jury instruction no. 38 was an error and that the state intended to instruct the jury that the property or services exceeded $750 in value, Washington's "law of the case" doctrine would require that the "instructions that are not objected to are treated as the properly applicable law...[199]" Thus, because the state provided no evidence that Ms. Schlottmann acted in any way to promote or facilitate the theft of the credit card or that she even knew that such a theft had occurred, no reasonable jury could have found this element beyond a reasonable doubt and the finding on this charge must be reversed.

F. THE EVIDENCE WAS INSUFFICIENT TO PROVE THAT MS. SCHLOTTMANN COMMITTED THE CRIME OF THEFT OF A FIREARM, WHERE THERE IS NO EVIDENCE THAT MS. SCHLOTTMANN EVER HANDLED THE FIREARM, OR EVEN KNEW THAT IT WAS TAKEN FROM THE FINELY RESIDENCE.

To convict the Ms. Schlottmann of the crime of theft of a firearm, as charged in Count II, the State had to prove, proved beyond a reasonable doubt, (1) on or about November 17, 2011, Ms. Schlottmann wrongfully obtained or exerted unauthorized control over a firearm belonging to another, to wit, Marian Finely, and (2) (a) that Ms. Schlottmann intended to

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[199] Robertson v. Perez, 156 Wn. 2d 33, 123 P.3d 844 (2005)

deprive the Ms. Finely of the firearm, or (b) Ms. Schlottmann acted as an accomplice to Lockard who stole the firearm arm from her.[200]

The evidence is insufficient because it fails to prove either (a) that Ms. Schlottmann, rather than her co-d, took the firearm from the home (principal liability), or (b) that Ms. Schlottmann helped her co-d take that firearm *knowing* that such aid, i.e. by helping her break into the home, would aid in *the crime* charged: theft of a firearm.

G. THE TRIAL COURT ERRED WHEN IT ENTERED MULTIPLE CONVICTIONS FOR THEFT AND POSSESSION OF STOLEN PROPERTY BASED UPON THE SAME CONTINUOUS ACT OF STEALING AND THEN POSSESSING THE SAME STOLEN PROPERTY FROM THE SAME VICTIM.

Although a jury may consider multiple charges arising from the same criminal conduct in a single proceeding, courts may not, however, *enter multiple convictions for the same offense without offending double jeopardy.*[201] "Where a defendant's act supports charges under two criminal statutes, a court weighing a double jeopardy challenge must determine whether, in light of legislative intent, the charged crimes constitute the same offense."[202]

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200 3RP 362. This instruction also adds to "or accomplice" language, which is not included in the WPIC. *See* WPIC 70.13 Theft of a Firearm—Elements.

201 *State v. Freeman*, 153 Wn.2d 765, 770, 108 P.3d 753, 756 (2005), emphasis added.

202 *Id.* at 771.

In *State v. Hancock*, the defendant appealed his convictions for first degree theft and first degree possession of stolen property arising from the same conduct.[203] Division III of the Court of Appeals in that case found the principle espoused by Mr. Justice Frankfurter in *Milanovich v. Unites States* to be directly applicable to the issue of why a person cannot be both the principal thief and the receiver of stolen goods: "And this is so for the commonsensical, if not obvious, reason that a man who takes property does not at the same time give himself the property he has taken."[204] The State argued that the defendant was guilty of both charges because he was not in physical possession of the stolen property during the entire course of conduct.[205] The Court rejected the State's argument on the ground of constructive possession, and reversed the defendant's first degree possession of stolen property conviction.[206]

Division I of the Court of Appeals adopted the same longstanding rule found in *Hancock* in *State v. Adams*.[207] In that case, the Court concluded:

> A person who breaks into a house and steals codeine pills, jewelry, luggage, coins and other expensive items may properly be convicted of burglary, theft, and possession of a

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203 44 Wash. App. 297, 298, 721 P.2d 1006, 1006-07 (1986)
204 *Id.* at 301.
205 *Id.* at 302
206 *Id.*
207 146 Wn. App. 1030 (2008).

> controlled substance without any double jeopardy violation. But a conviction for possession of stolen property cannot stand when based on the same facts that constitute theft.[208]

Even assuming that Ms. Schlottman was in constructive possession of Winkelman's credit card on November 17 and 18, applying the *Hancock* rule is dispositive: Ms. Schlottman cannot simultaneously steal, and then give herself Winkelman's credit card. Furthermore, assuming *arguendo* that Lockard was the principal to Winkelman's credit card theft and Ms. Schlottman the accomplice, principal and accomplice liability are one and the same theory of liability, which does not alter the analysis.

Finally, the fact that the trial court merged Counts XI and XII at sentencing is also determinative as to the issue of merging Counts VII and XIII. Counts XI and XII stemmed from the same conduct, namely, the theft of the checkbook from the Japhet residence. Likewise, Counts VII and XIII stemmed from the theft of the credit card from the Winkelman residence.

Although *Hancock* and *Adams*, as well as the merger of Counts XI and XII, are dispositive as to merging Counts VII and XIII in Ms. Schlottman's case, the legislative intent behind Washington's theft and possession of stolen property statutes further support the merger of Counts VII and XIII.

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[208] *Id.*

The merger doctrine is helpful in deciding the legislative intent behind two statutes that have different elements.[209] "Under the merger doctrine, when the degree of one offense is raised by conduct separately criminalized by the legislature, we presume the legislature intended to punish both offenses through a greater sentence for the greater crime...."[210] However, there is an exception where a defendant could be convicted of the included crime as well as the greater crime if there is a separate injury to the victim that is distinct, and not "merely incidental to the crime of which it forms an element."[211]

After a person steals a credit card, that person *necessarily* gains immediate possession of it. The two above-mentioned statutes both contain a necessary fact: possession. Therefore, the possession of stolen property in the second degree conviction (Count XIII) must merge with the theft in the second degree conviction (Count VII). The alleged possession of Winkleman's credit card was necessarily incidental to its theft. Winkleman did not suffer any additional injury, for example, unauthorized expenditures, as a result of the initial theft.

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209 *State v. Adams*, 146 Wash. App. 1030 (2008).
210 *Id.*
211 *Freeman*, 153 Wn.2d at 771.

For the above-mentioned reasons, at the very least, Count XIII should be vacated and remanded for a re-sentencing hearing.

B. INEFFECTIVE ASSISTANCE OF COUNSEL – FAILURE TO ARGUE SAME CRIMINAL CONDUCT

Two crimes must be counted as one if they "require the same criminal intent, are committed at the same time and place, and involve the same victim."[212] The burden of presenting this argument at sentencing falls on defense counsel.[213] When defense counsel argues that two crimes are the same criminal conduct, the trial court must make factual findings, i.e. regarding the time and place the crimes were committed, and conclusions of law, i.e. whether the crimes ultimately constitute the same criminal conduct. The factual findings are reviewed for an abuse of discretion, while the conclusions of law are reviewed de novo.[214]

Normally, if defense counsel does not argue same criminal conduct at sentencing, the argument is waived on appeal.[215] Here, trial counsel failed to make any argument that any of Ms. Schlottman's convictions were the same criminal conduct. This may have constituted waiver. Nevertheless, he

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212 RCW 9.94A.589(1)(a).

213 *State v. Graciano,* 176 Wn.2d 531, 537-38, 295 P.3d 219 (2013).

214 *Id.*

215 *State v. Phuong,* 174 Wn. App. 494, 547, 299 P.3d 37 (2013).

can still argue that these failures were the result of ineffective assistance of counsel because such a claim is an error is of constitutional magnitude.[216]

Defense counsels failure to argue same criminal conduct at sentencing can amount to ineffective assistance of counsel.[217] To establish this claim, Ms. Schlottman must show the trial court had the discretion to find that the two crimes were the same criminal conduct under the facts of his case and that no reasonably competent attorney would have failed to make that argument at sentencing.[218]

Here, given the facts of the case, the trial court certainly had the discretion to find that Ms. Schlottman's convictions were the same criminal conduct. Counsel's inexplicable mistake for not arguing this, and supporting it with the case law below, was ineffective assistance of counsel.

The State charged Ms. Schlottman with numerous crimes, each of which related to three separate, but allegedly related burglaries of the three different residences, including the unlawful entry of each home (the burglaries), the unlawful taking of items from inside each of those homes (the theft charges), and the later unlawful possession of those items which

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216 *Id.*

217 *State v. Saunders,* 120 Wn. App. 800, 825, 86 P.3d 232 (2004) ("counsel's decision not to argue same criminal conduct as to the rape and kidnapping charges constituted ineffective assistance of counsel").

218 *See id.*

occurred only hours after the burglaries allegedly occurred. Many of these crimes involved the same victims (either Winkleman, Japhet, or the Finely), at the same locations (at each respective residence and/or a short distance from them), and the same relative time frame (a 24 hour period in November 2011).

The dispositive issue, had counsel attempted to raise this argument at sentencing, would have been Ms. Schlottman's objective criminal intent when she committed these crimes. Whether two crimes are the same criminal conduct usually turns on whether the defendant committed them with the same criminal intent. Importantly, as required here, "is not the particular mens rea element of the particular crime, but rather is the offender's objective criminal purpose in committing the crime."[219] Thus, although the mens rea of the crime charged is relevant, it is not dispositive. Whether two crimes were committed with the same intent usually turns on the facts of each case.

As the Supreme Court held in *Dunaway*, the court must start by asking whether the defendant's intent, *viewed objectively*, changed from one crime to the other.[220] In that case, for example, the Court found that

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219 *State v. Adame,* 56 Wn. App. 803, 811, 785 P.2d 1144 (1990).

220 *Vike,* 125 Wn.2d at 411 (citing *State v. Dunaway,* 109 Wn.2d 207, 215, 743 P.2d 1237 (1987).

convictions for kidnapping and robbery were so must be counted as one where the defendant abducted his victim (kidnapping) with the intent to commit robbery, and there was no evidence that his intent charged throughout the course of committing those crimes.[221]

Viewing Ms. Schlottmann's intent objectively, the trial court could easily have concluded that she committed numerous offenses with the same objective purpose: to steal valuables from inside each residence. Notably, there is no evidence whatsoever that this intent changed throughout the course of any of these crimes.[222] The trial court would have, therefore, had the discretion to count them one.[223]

Thus, the evidence clearly suggests that many of Ms. Schlottmann's conviction, specifically those with the same victims, were at the same place, were "committed as part of a scheme or plan" without any evidence to suggest any "substantial change in the nature of [his] criminal objective."[224] Counsel was therefore ineffective for failing to raise this issue.

When the trial court abuses its discretion in treating the same criminal conduct as separate crimes, and that abuse of discretion is based

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221 *Dunaway,* 109 Wash.2d at 217, 743 P.2d 1237.

222 *See, e.g., State v. Vike,* 125 Wn.2d 407, 411, 885 P.2d 824 (1994).

223 *See State v. Rodriguez,* 61 Wn.App. 812, 816, 812 P.2d 868, *review denied,* 118 Wn.2d 1006, 822 P.2d 288 (1991).

224 *State v. Lewis,* 115 Wash.2d 294, 302, 797 P.2d 1141 (1990); *State v. Boze,* 47 Wash.App. 477, 480, 735 P.2d 696 (1987).

upon a factual error, the proper remedy is to remand for resentencing with instructions to treat the convictions as one offense in the offender score.[225]

II. CONCLUSION

For the foregoing reasons, this Court should grant the relief it deems necessary as requested specifically in each argument section above.

Dated August 8, 2015

Respectfully submitted,

Mitch Harrison, WSBA #43040
Attorney for Petitioner

[225] *Dunaway*, 109 Wn.2d at 217.

III. STATEMENT OF FINANCES

"If petitioner is unable to pay the filing fee or fees of counsel, a request should be included for waiver of the filing fee and for the appointment of counsel at public expense. The request should be supported by a statement of petitioner's total assets and liabilities."[226]

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226 RULE 16.7 (4) (Statement of Finances).

II. OATH

After being first duly sworn on oath, I depose and say that: I am the attorney for petitioner, I have read the petition, know its contents, and believe the petition is true.

Dated August 13, 2015

Respectfully submitted,

Mitch Harrison, WSBA #43040
Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me, the undersigned notary public, on this 13th day of August, 2015.

Kaitlyn R. Jackson
Notary Public for Washington
My Commission Expires: October, 09, 2016

CERTIFICATE OF SERVICE

I, Ryan English, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. I am employed by the law firm of Harrison Law.

2. At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

3. On the date set forth below, I served in the manner noted a true and correct copy of this **Personal Restraint Petition** on the following persons in the manner indicated below:

Court of Appeals, Div II via hand delivery to Court of Appeals, Division I One Union Square 600 University St Seattle, WA 98101-1176	☐ U.S. Mail ☐ Email: ☐ Fax: ☒ Hand Delivery
Thurston County Prosecutor Appellate Division 2000 Lakeridge Dr. SW #2 Olympia, WA 98502	☒ U.S. Mail ☐ Email: ☐ Fax:
Alexis J. Schlottmann, DOC #361791 Mission Creek Corrections Center for Women 3420 NE Sand Hill Road Belfair, WA 98528	☒ U.S. Mail ☐ Email: ☐ Fax:
Supreme Court Temple of Justice P.O. Box 40929 Olympia, WA 98504-0929	☐ U.S. Mail ☒ Email: Supreme@courts.wa.gov ☐ Fax:

DATED this 13th day of August, 2015 at Seattle, Washington.

Ryan English

92189-0

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON, Plaintiff/Appellee, v. ALEXIS J. SCHLOTTMANN, Petitioner.	COURT OF APPEALS NO. Thurston County Superior Court No. 11-101815-0 MOTION TO FILE OVER LENGTH PETIONER'S BRIEF

1. Identity of Moving Party

Petitioner Alexis J. Schlottmann, by and through her attorney, Mitch Harrison asks for the relief described in Paragraph 2.

2. Statement of Relief Sought

Petitioner's counsel requests the Court to permit the filing of an Over-Length Brief on behalf of the petitioner on the above-captioned cause as permitted in RAP 10.4(b). Petitioner requests that the Court allow the 50-page limit as stipulated in RAP 10.4(b) be extended to 74 pages (73, not counting cover page) in accordance with the exception stated in this rule.

3. Grounds for Relief

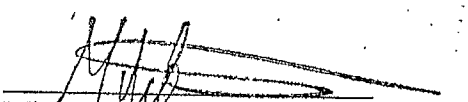
Mitch Harrison
Attorney at Law
101 Warren Avenue North
Seattle, Washington 98109
Tel (253) 335-2965 ♦ Fax (888) 598-1715

Washington Rule of Appellate Procedure (RAP) 10.4(b) states that, "[a] brief of appellant, petitioner, or respondent should not exceed 50 pages. ... *For compelling reasons the court may grant a motion to file an over-length brief."* RAP 10.4(b).

Here, Ms. Schlottmann has several compelling reasons stated throughout the entirety of her appeal. First, there is evidence that the trial court's jury instructions were improper and violated Ms. Schlottmann's Due Process rights under the Fourteenth Amendment. Second, there exists an argument that the evidence was insufficient to prove that Ms. Schlottmann was an accomplice to a multitude of the crimes charged. With 13 counts brought against Ms. Schlottmann, of which many there was little to no evidence to support, the State relied heavily on accomplice liability to convict her on many of the charges – but the jury instructions or verdict do not state whether she was found guilty as a principal or an accomplice. As such, the analyses in the petition for each charge must be for both, and thus, much more extensive in length.

As such, Ms. Schlottmann respectfully requests that he should be permitted to file an over-length petitioner's brief with This Court.

Dated August 13, 2015,



Mitch Harrison, ESQ.,
WSBA#43040
Attorney for Petitioner

Mitch Harrison
Attorney at Law
101 Warren Avenue North
Seattle, Washington 98109
Tel (253) 335-2965 ♦ Fax (888) 598-1715

CERTIFICATE OF SERVICE

I, Kaitlyn Jackson, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

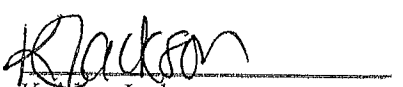
1. I am employed by the law firm of Harrison Law.

2. At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

3. On the date set forth below, I served in the manner noted a true and correct copy of this **Motion to File Over Length Petitioner's Brief** on the following persons in the manner indicated below:

Court of Appeals, Div II	☐ U.S. Mail ☒ Email: Coa2filings@courts.wa.gov ☐ Fax: ☐ Hand Delivery
Thurston County Prosecutor Appellate Division 2000 Lakeridge Dr. SW #2 Olympia, WA 98502	☒ U.S. Mail ☐ Email: ☐ Fax:
Alexis J. Schlottmann, DOC #361791 Mission Creek Corrections Center for Women 3420 NE Sand Hill Road Belfair, WA 98528	☒ U.S. Mail ☐ Email: ☐ Fax:
Supreme Court Temple of Justice P.O. Box 40929 Olympia, WA 98504-0929	☐ U.S. Mail ☒ Email: Supreme@courts.wa.gov ☐ Fax:

DATED this 13th day of August, 2015 at Seattle, Washington.



Kaitlyn Jackson

Mitch Harrison
Attorney at Law
101 Warren Avenue North
Seattle, Washington 98109
Tel (253) 335-2965 ♦ Fax (888) 598-1715

THE SUPREME COURT
STATE OF WASHINGTON

RONALD R. CARPENTER
SUPREME COURT CLERK

SUSAN L. CARLSON
DEPUTY CLERK / CHIEF STAFF ATTORNEY

TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

August 19, 2015

Mitch Harrison
Attorney at Law
101 Warren Avenue N.
Seattle, WA 98109

Counsel:

The "PERSONAL RESTRAINT PETITION" and "MOTION TO FILE OVER LENGTH PETITIONER'S BRIEF" filed on behalf of Alexis J. Schlottmann were forwarded to this Court by the Court of Appeals and received on August 19, 2015. The petition cannot be processed further until either the required $250 filing fee is paid to this Court or the fee is waived upon appropriate request.

Although the petition requests waiver of the filing fee, it does not appear that a completed statement of finances was provided. I have enclosed a "Statement of Finances" form.

In addition, I am enclosing the signature page which was not signed by you. Last, I note that RAP 16.7(a)(7) requires a verification signed by the Petitioner be filed.

Accordingly, your petition will be held without further action until you have either paid the filing fee to this Court or submitted a completed statement of finances.

Sincerely,

Susan L. Carlson
Supreme Court Deputy Clerk

SLC:mt

Enclosures as stated

Tracy, Mary

From: Tracy, Mary
Sent: Wednesday, August 19, 2015 4:05 PM
To: 'mitch@mitchharrisonlaw.com'
Subject: Schlottmann personal restraint petition
Attachments: Schlottmann letter 8-19-15.pdf

Importance: High

Clerk and/or Counsel:

Attached is a copy of the letter issued by the Clerk or Deputy Clerk on this date in the above referenced case. Please consider this as the original for your files, a copy will not be sent by regular mail. When filing documents by email with this Court, please use the main email address at supreme@courts.wa.gov

Mary Tracy
Docket Specialist/Capital Case Manager
Washington State Supreme Court
(360) 357-2072
mary.tracy@courts.wa.gov

IN THE COURT OF APPEALS
IN THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON, Respondent, v. ALEXIS J. SCHLOTTMANN, Appellant.	COA # : VERIFICATION

I. VERIFICATION

I declare that I have received a copy of the petition prepared by my attorney and that I consent to the petition being filed on my behalf.

DATED THIS 26 DAY OF August, 2015.

Alexis J. Schlottmann
Appellant/Petitioner

Mitch Harrison
Attorney at Law
101 Warren Avenue North
Seattle, Washington 98109
Tel (253) 335-2965 ♦ Fax (888) 598-1715

Name: Alexis Schlottmann
CoA Case No. 92189-0

STATEMENT OF FINANCES:

If you cannot afford to pay the $250 filing fee or cannot afford to pay an attorney to help you, fill out this form. If you have enough money for these, do not fill this part of the form. If currently in confinement you will need to attach a copy of your prison finance statement.

1. I do X do not ____ ask the court to file this without making me pay the $250 filing fee because I am so poor and cannot pay the fee.

2. I have $ 0.00 in my prison or institution account.

3. I do ____ do not X ask the court to appoint a lawyer for me because I am so poor and cannot afford to pay a layer.

4. I am X am not ____ employed. My salary or wages amount to $ 80.00 a month. My employer is Mission Creek Corrections Center for Women
Name and address of employer

5. During the past 12 months I did ____ did not X get any money from a business, profession or other form of self-employment. (If I did, it was ____
Type of self-employment
And the total income I received was $ n/a .

6. During the past 12 months I:

Did ___ Did Not X Receive any rent payments. If so, the total I received was $____

Did ___ Did Not X Receive any interest. If so, the total I received was $____

Did ___ Did Not X Receive any dividends. If so, the total I received was $____

Did ___ Did Not X Receive any other money. If so the total I received was $____

Do___ Do Not X Have any cash except as said in question 2 of Statement of Finances. If so the total amount of cash I have is $____.

Do ___ Do Not X Have any savings or checking accounts. If so, the total amount in all accounts is $____

Do ____Do Not X Own stocks, bonds or notes. If so, their total value is: $____.

7. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what eat item or property is worth and how much you owe on it. Do not list household furniture and furnishings and clothing which you or your family need.

Items	Value

8. I am ____ am not X married. If I am married, my wife or husband's name and address is:

_____

_____

9. All of the persons who need me to support them are listed below:

Name & Address	Relationship	Age

10. All the bills I owe are listed here:

Name & Address of Creditor	Amount
LFO	11,000.00

DOC#: 0000361791 Name: SCHLOTTMANN, ALEXIS J DOB: 01/06/1989
LOCATION: Q01-034-BC1131

ACCOUNT BALANCES Total: 45.00 CURRENT: 45.00 HOLD: 0.00

SUB ACCOUNT	07/20/2015 START BALANCE	08/20/2015 END BALANCE
SPENDABLE BAL	0.00	0.09
SAVINGS BALANCE	44.91	44.91
WORK RELEASE SAVINGS		
EDUCATION ACCOUNT		
MEDICAL ACCOUNT		
POSTAGE ACCOUNT	0.00	0.00
COMM SERV REV FUND ACCOUNT		

DEBTS AND OBLIGATIONS

TYPE	PAYABLE	INFO NUMBER	AMOUNT OWING	AMOUNT PAID	WRITE OFF AMT.
MEDD	MEDICAL COPAY DEBT	08052014	0.00	6.83	0.00
COIS	COST OF INCARCERATION /07112000	10312012	UNLIMITED	88.81	0.00
HYGA	INMATE STORE DEBT	11062012	0.00	97.50	0.00
CVCS	CRIME VICTIM COMPENSATION/07112000	10312012	UNLIMITED	22.45	0.00
LFO	LEGAL FINANCIAL OBLIGATIONS	20121120	UNLIMITED	74.08	0.00
EL	ESCORTED LEAVE	10312012	UNLIMITED	0.00	0.00
COI	COST OF INCARCERATION	10312012	UNLIMITED	56.08	0.00
CVC	CRIME VICTIM COMPENSATION	10312012	UNLIMITED	28.86	0.00
DEND	DENTAL COPAY DEBT	12272012	0.00	27.13	0.00
TVD	TV CABLE FEE DEBT	11102012	0.00	9.32	0.00
LMD	LEGAL MAIL DEBT	03072013	0.00	2.16	0.00
POSD	POSTAGE DEBT	11022012	0.00	8.00	0.00

TRANSACTION DESCRIPTIONS -- SPENDABLE BAL SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
07/27/2015	P4	CLASS 4 GRATUITY JUNE 2015 MCCCW	105.90	105.90
07/27/2015	DED	Deductions-COI-10312012 D D	(5.30)	100.60
07/27/2015	DED	Deductions-TVD-11102012 D D	(0.20)	100.40
07/31/2015	CRS	CRS SAL ORD #8375356	(89.05)	11.35
08/07/2015	CRS	CRS SAL ORD #8384888	(10.28)	1.07
08/08/2015	TV	I05 - TV CABLE FEE	(0.50)	0.57
08/13/2015	POS	POSTAGE	(0.48)	0.09

TRANSACTION DESCRIPTIONS -- SAVINGS BALANCE SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE

TRANSACTION DESCRIPTIONS -- WORK RELEASE SAVINGS SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE

TRANSACTION DESCRIPTIONS -- EDUCATION ACCOUNT SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE

DOC#: 0000361791 Name: SCHLOTTMANN, ALEXIS J DOB: 01/06/1989
LOCATION: Q01-034-BC1131

TRANSACTION DESCRIPTIONS -- MEDICAL ACCOUNT SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE

TRANSACTION DESCRIPTIONS -- POSTAGE ACCOUNT SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE

TRANSACTION DESCRIPTIONS -- COMM SERV REV FUND ACCOUNT SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE

DOC#: 0000361791 Name: SCHLOTTMANN, ALEXIS J DOB: 01/06/1989
LOCATION: Q01-034-BC1131

ACCOUNT BALANCES Total: 46.25 CURRENT: 46.25 HOLD: 0.00

SUB ACCOUNT	08/01/2014 START BALANCE	08/24/2015 END BALANCE
SPENDABLE BAL	67.35	1.34
SAVINGS BALANCE	44.91	44.91
WORK RELEASE SAVINGS		
EDUCATION ACCOUNT		
MEDICAL ACCOUNT		
POSTAGE ACCOUNT	0.00	0.00
COMM SERV REV FUND ACCOUNT		

DEBTS AND OBLIGATIONS

TYPE	PAYABLE	INFO NUMBER	AMOUNT OWING	AMOUNT PAID	WRITE OFF AMT.
MEDD	MEDICAL COPAY DEBT	08052014	0.00	6.83	0.00
COIS	COST OF INCARCERATION /07112000	10312012	UNLIMITED	88.81	0.00
HYGA	INMATE STORE DEBT	11062012	0.00	97.50	0.00
CVCS	CRIME VICTIM COMPENSATION/07112000	10312012	UNLIMITED	22.45	0.00
LFO	LEGAL FINANCIAL OBLIGATIONS	20121120	UNLIMITED	74.17	0.00
EL	ESCORTED LEAVE	10312012	UNLIMITED	0.00	0.00
COI	COST OF INCARCERATION	10312012	UNLIMITED	56.08	0.00
CVC	CRIME VICTIM COMPENSATION	10312012	UNLIMITED	28.86	0.00
DEND	DENTAL COPAY DEBT	12272012	0.00	27.13	0.00
TVD	TV CABLE FEE DEBT	11102012	0.00	9.32	0.00
LMD	LEGAL MAIL DEBT	03072013	0.00	2.16	0.00
POSD	POSTAGE DEBT	11022012	0.00	8.00	0.00

TRANSACTION DESCRIPTIONS -- SPENDABLE BAL SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
08/01/2014	OT	Transfer funds for Commissary SAPOS Sales S/o - 7862302	(2.75)	64.60
08/01/2014	CRS	CRS SAL ORD #7862572	(63.68)	0.92
08/05/2014	MEDD	MEDICAL COPAY DEBT	3.08	4.00
08/05/2014	MED	I05 - MEDICAL COPAY	(4.00)	0.00
08/09/2014	TVD	TV CABLE FEE DEBT	0.50	0.50
08/09/2014	TV	I05 - TV CABLE FEE	(0.50)	0.00
08/25/2014	P4	CLASS 4 GRATUITY JULY 2014 MCCCW	104.10	104.10
08/25/2014	DED	Deductions-COI-10312012 D D	(5.21)	98.89
08/25/2014	DED	Deductions-MEDD-08052014 D D	(3.08)	95.81
08/25/2014	DED	Deductions-TVD-11102012 D R	(0.50)	95.31
08/25/2014	POS	POSTAGE 8/12	(0.48)	94.83
08/25/2014	DEN	I05 - DENTAL COPAY	(4.00)	90.83
08/29/2014	CRS	CRS SAL ORD #7903034	(79.29)	11.54
09/02/2014	JPAY	JPAY MEDIA ACCT WITHDRAWAL - 9/2/14	(10.00)	1.54

DOC#: 0000361791 Name: SCHLOTTMANN, ALEXIS J DOB: 01/06/1989
LOCATION: Q01-034-BC1131

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
09/11/2014	POS	POSTAGE	(0.48)	1.06
09/13/2014	TV	I05 - TV CABLE FEE	(0.50)	0.56
09/17/2014	POS	POSTAGE	(0.48)	0.08
09/25/2014	P4	CLASS 4 GRATUITY AUG 2014 MCCCW	80.90	80.98
09/25/2014	DED	Deductions-COI-10312012 D D	(4.05)	76.93
09/26/2014	CRS	CRS SAL ORD #7943622	(56.13)	20.80
09/29/2014	CDW	DEBORAH BAKER	(20.00)	0.80
10/01/2014	DEND	DENTAL COPAY DEBT	3.20	4.00
10/01/2014	DEN	I05 - DENTAL COPAY	(4.00)	0.00
10/10/2014	POSD	POSTAGE DEBT	0.96	0.96
10/10/2014	POS	POSTAGE	(0.96)	0.00
10/11/2014	TVD	TV CABLE FEE DEBT	0.50	0.50
10/11/2014	TV	I05 - TV CABLE FEE	(0.50)	0.00
10/20/2014	POSD	POSTAGE DEBT	0.48	0.48
10/20/2014	POS	POSTAGE	(0.48)	0.00
10/24/2014	P4	CLASS 4 GRATUITY SEPT 2014 MCCCW	105.80	105.80
10/24/2014	DED	Deductions-COI-10312012 D D	(5.29)	100.51
10/24/2014	DED	Deductions-DEND-12272012 D D	(3.20)	97.31
10/24/2014	DED	Deductions-TVD-11102012 D R	(0.50)	96.81
10/24/2014	DED	Deductions-POSD-11022012 D R	(1.44)	95.37
10/24/2014	POS	POSTAGE	(0.96)	94.41
10/27/2014	POS	POSTAGE	(0.48)	93.93
10/27/2014	DEN	I05 - DENTAL COPAY	(4.00)	89.93
10/28/2014	JPAY	JPAY MEDIA ACCT WITHDRAWAL-10/28/14	(15.00)	74.93
10/31/2014	OT	Transfer funds for Commissary SAPOS Sales S/o - 7993626	(5.50)	69.43
10/31/2014	CRS	CRS SAL ORD #7993789	(66.05)	3.38
11/06/2014	POS	POSTAGE	(0.48)	2.90
11/08/2014	TV	I05 - TV CABLE FEE	(0.50)	2.40
11/14/2014	P4	CLASS 4 GRATUITY OCT 2014 MCCCW	93.50	95.90
11/14/2014	DED	Deductions-COI-10312012 D D	(4.68)	91.22
11/14/2014	CRS	CRS SAL ORD #8013032	(2.35)	88.87
11/14/2014	POS	POSTAGE	(0.42)	88.45
11/21/2014	CRS	CRS SAL ORD #8024613	(30.50)	57.95
11/21/2014	CDW	TRIARCO ARTS AND CRAFTS	(39.62)	18.33
12/02/2014	WREDC	DUE TO CHARITIES MCCCW pizza	(7.51)	10.82
12/03/2014	POS	POSTAGE	(0.38)	10.44
12/05/2014	CRS	CRS SAL ORD #8039043	(10.19)	0.25
12/11/2014	MEDD	MEDICAL COPAY DEBT	3.75	4.00
12/11/2014	MED	I05 - MEDICAL COPAY	(4.00)	0.00
12/13/2014	TVD	TV CABLE FEE DEBT	0.50	0.50
12/13/2014	TV	I05 - TV CABLE FEE	(0.50)	0.00
12/15/2014	P4	CLASS 4 GRATUITY NOV 2014 MCCCW	67.50	67.50
12/15/2014	DED	Deductions-COI-10312012 D D	(3.38)	64.12
12/15/2014	DED	Deductions-MEDD-08052014 D D	(3.75)	60.37
12/15/2014	DED	Deductions-TVD-11102012 D R	(0.50)	59.87
12/15/2014	POS	POSTAGE	(0.48)	59.39

DOC#: 0000361791 Name: SCHLOTTMANN, ALEXIS J DOB: 01/06/1989
LOCATION: Q01-034-BC1131

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
12/15/2014	POS	POSTAGE	(0.48)	58.91
12/15/2014	POS	POSTAGE	(0.48)	58.43
12/15/2014	POS	POSTAGE	(0.48)	57.95
12/15/2014	POS	POSTAGE	(0.48)	57.47
12/15/2014	POS	POSTAGE	(0.48)	56.99
12/15/2014	POS	POSTAGE	(0.69)	56.30
12/15/2014	POS	POSTAGE	(0.48)	55.82
12/19/2014	OT	Transfer funds for Commissary SAPOS Sales S/o - 8060655	(2.20)	53.62
12/19/2014	CRS	CRS SAL ORD #8060862	(52.98)	0.64
01/10/2015	TV	I05 - TV CABLE FEE	(0.50)	0.14
01/15/2015	P4	CLASS 4 GRATUITY DEC 2014 MCCCW	67.00	67.14
01/15/2015	DED	Deductions-COI-10312012 D D	(3.35)	63.79
01/16/2015	CRS	CRS SAL ORD #8095804	(45.64)	18.15
01/22/2015	JPAY	JPAY MEDIA ACCT WITHDRAWAL - 1/22/15	(10.00)	8.15
01/27/2015	POS	POSTAGE 1/25/15 Seattle WA	(0.44)	7.71
01/30/2015	CRS	CRS SAL ORD #8116300	(4.26)	3.45
02/04/2015	POS	POSTAGE 2/2/15 Bonney Lake WA	(1.19)	2.26
02/12/2015	POS	POSTAGE	(0.48)	1.78
02/13/2015	CRS	CRS SAL ORD #8135419	(1.61)	0.17
02/14/2015	TVD	TV CABLE FEE DEBT	0.33	0.50
02/14/2015	TV	I05 - TV CABLE FEE	(0.50)	0.00
02/17/2015	P4	CLASS 4 GRATUITY JAN 2015 MCCCW	67.60	67.60
02/17/2015	DED	Deductions-COI-10312012 D D	(3.38)	64.22
02/17/2015	DED	Deductions-TVD-11102012 D D	(0.33)	63.89
02/20/2015	OT	Transfer funds for Commissary SAPOS Sales S/o - 8144929	(2.75)	61.14
02/20/2015	CRS	CRS SAL ORD #8145111	(57.01)	4.13
02/27/2015	MED	I05 - MEDICAL COPAY	(4.00)	0.13
03/14/2015	TVD	TV CABLE FEE DEBT	0.37	0.50
03/14/2015	TV	I05 - TV CABLE FEE	(0.50)	0.00
03/16/2015	P4	CLASS 4 GRATUITY JAN 2015 MCCCW	6.10	6.10
03/16/2015	P4	CLASS 4 GRATUITY FEB 2015 MCCCW	89.00	95.10
03/16/2015	DED	Deductions-COI-10312012 D D	(4.45)	90.65
03/16/2015	DED	Deductions-TVD-11102012 D D	(0.37)	90.28
03/17/2015	WREDC	MCCCW FUNDRAISER - Donuts	(4.25)	86.03
03/20/2015	CRS	CRS SAL ORD #8186463	(82.03)	4.00
03/27/2015	CRS	CRS SAL ORD #8196381	(3.94)	0.06
04/07/2015	J1_TXN	JPINTERF: JPAY deposit spendable, TXN_TRACE 44783747, TXN_DATE 04/07/2	10.00	10.06
04/07/2015	DED	Deductions-LFO-20121120 D D	(0.06)	10.00
04/10/2015	CRS	CRS SAL ORD #8215587	(9.72)	0.28
04/11/2015	TVD	TV CABLE FEE DEBT	0.22	0.50
04/11/2015	TV	I05 - TV CABLE FEE	(0.50)	0.00
04/15/2015	P4	CLASS 4 GRATUITY MARCH 2015 MCCCW	95.80	95.80
04/15/2015	DED	Deductions-COI-10312012 D D	(4.79)	91.01
04/15/2015	DED	Deductions-TVD-11102012 D D	(0.22)	90.79

DOC#: 0000361791 Name: SCHLOTTMANN, ALEXIS J DOB: 01/06/1989
LOCATION: Q01-034-BC1131

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
04/17/2015	CRS	CRS SAL ORD #8226917	(66.71)	24.08
04/24/2015	CRS	CRS SAL ORD #8236555	(14.90)	9.18
05/01/2015	CRS	CRS SAL ORD #8247678	(7.20)	1.98
05/09/2015	TV	I05 - TV CABLE FEE	(0.50)	1.48
05/11/2015	J1_TXN	JPINTERF: JPAY deposit spendable, TXN_TRACE 45857113, TXN_DATE 05/11/2	10.00	11.48
05/11/2015	DED	Deductions-LFO-20121120 D D	(1.48)	10.00
05/13/2015	POS	POSTAGE	(0.21)	9.79
05/15/2015	CRS	CRS SAL ORD #8267411	(8.32)	1.47
05/22/2015	CRS	CRS SAL ORD #8277100	(1.44)	0.03
05/26/2015	P4	CLASS 4 GRATUITY APR 2015 MCCCW	100.00	100.03
05/26/2015	DED	Deductions-COI-10312012 D D	(5.00)	95.03
05/26/2015	WREDC	DUE TO CHARITIES Relay for Life MCCCW	(11.85)	83.18
05/29/2015	CRS	CRS SAL ORD #8287405	(80.31)	2.87
06/05/2015	CRS	CRS SAL ORD #8296514	(2.77)	0.10
06/13/2015	TVD	TV CABLE FEE DEBT	0.40	0.50
06/13/2015	TV	I05 - TV CABLE FEE	(0.50)	0.00
06/15/2015	J1_TXN	JPINTERF: JPAY deposit spendable, TXN_TRACE 46957820, TXN_DATE 06/15/2	10.00	10.00
06/19/2015	CRS	CRS SAL ORD #8317371	(9.95)	0.05
06/25/2015	P4	CLASS 4 GRATUITY MAY 2015 MCCCW	81.50	81.55
06/25/2015	DED	Deductions-COI-10312012 D D	(4.08)	77.47
06/25/2015	DED	Deductions-TVD-11102012 D D	(0.40)	77.07
06/26/2015	CRS	CRS SAL ORD #8327930	(73.42)	3.65
07/02/2015	CRS	CRS SAL ORD #8334272	(3.35)	0.30
07/11/2015	TVD	TV CABLE FEE DEBT	0.20	0.50
07/11/2015	TV	I05 - TV CABLE FEE	(0.50)	0.00
07/27/2015	P4	CLASS 4 GRATUITY JUNE 2015 MCCCW	105.90	105.90
07/27/2015	DED	Deductions-COI-10312012 D D	(5.30)	100.60
07/27/2015	DED	Deductions-TVD-11102012 D D	(0.20)	100.40
07/31/2015	CRS	CRS SAL ORD #8375356	(89.05)	11.35
08/07/2015	CRS	CRS SAL ORD #8384888	(10.28)	1.07
08/08/2015	TV	I05 - TV CABLE FEE	(0.50)	0.57
08/13/2015	POS	POSTAGE	(0.48)	0.09
08/20/2015	OTH	OTHER DEPOSITS LEWIS	10.00	10.09
08/20/2015	DED	Deductions-LFO-20121120 D D	(0.09)	10.00
08/21/2015	CRS	CRS SAL ORD #8406027	(8.66)	1.34

TRANSACTION DESCRIPTIONS -- SAVINGS BALANCE SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE

TRANSACTION DESCRIPTIONS -- WORK RELEASE SAVINGS SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE

TRANSACTION DESCRIPTIONS -- EDUCATION ACCOUNT SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE

DOC#: 0000361791 Name: SCHLOTTMANN, ALEXIS J DOB: 01/06/1989
LOCATION: Q01-034-BC1131

TRANSACTION DESCRIPTIONS -- MEDICAL ACCOUNT SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE

TRANSACTION DESCRIPTIONS -- POSTAGE ACCOUNT SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
08/01/2014	OT	Transfer funds for Commissary SAPOS Sales S/o - 7862302	2.75	2.75
08/01/2014	SAPOS	SAPOS SAL ORD #7862302	(2.75)	0.00
10/31/2014	OT	Transfer funds for Commissary SAPOS Sales S/o - 7993626	5.50	5.50
10/31/2014	SAPOS	SAPOS SAL ORD #7993626	(5.50)	0.00
11/17/2014	RPOST	RECEIPT FOR POSTAGE DOHN	10.00	10.00
11/21/2014	SAPOS	SAPOS SAL ORD #8024400	(9.90)	0.10
12/03/2014	SPOST	POSTAGE SUBACCOUNT WITHDRAWAL	(0.10)	0.00
12/19/2014	OT	Transfer funds for Commissary SAPOS Sales S/o - 8060655	2.20	2.20
12/19/2014	SAPOS	SAPOS SAL ORD #8060655	(2.20)	0.00
01/05/2015	J6_TXN	JPINTERF: JPAY deposit postage, TXN_TRACE 41765658, TXN_DATE 01/05/201	10.00	10.00
01/15/2015	SPOST	POSTAGE SUBACCOUNT WITHDRAWAL	(0.48)	9.52
01/15/2015	SPOST	POSTAGE SUBACCOUNT WITHDRAWAL	(0.48)	9.04
01/15/2015	SPOST	POSTAGE SUBACCOUNT WITHDRAWAL	(0.48)	8.56
01/15/2015	SPOST	POSTAGE SUBACCOUNT WITHDRAWAL	(0.48)	8.08
01/21/2015	SPOST	POSTAGE SUBACCOUNT WITHDRAWAL	(0.69)	7.39
01/21/2015	SPOST	POSTAGE SUBACCOUNT WITHDRAWAL	(0.48)	6.91
01/27/2015	SPOST	POSTAGE 1/25/15 Seattle WA	(6.91)	0.00
02/20/2015	OT	Transfer funds for Commissary SAPOS Sales S/o - 8144929	2.75	2.75
02/20/2015	SAPOS	SAPOS SAL ORD #8144929	(2.75)	0.00

TRANSACTION DESCRIPTIONS -- COMM SERV REV FUND ACCOUNT SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE

From: SCHLOTTMANN, ALEXIS J (DOC:361791 / Unit:B BLDG / Cell:UNBBC1131) Sent: 8/19/2015 5:42:45 PM

To: Offender Banking Read: 8/20/2015 8:10:44 AM

CAN I PLEASE GET A PRINT OUT OF MY FINANCIAL STATEMENTS\TRANSACTIONS FOR THE LAST 12 MONTHS AS IT IS NEEDED FOR A LEGAL DOCUMENT REQUESTED BY THE COURTS. THANK YOU

SUPREME COURT

September 08, 2015 - 3:52 PM

Transmittal Letter

Document Uploaded: 0-prp-92189-0 9-8-15.pdf

Case Name: Personal Restraint Petition of Alexis J. Schlottmann

County Cause Number:

Court of Appeals Case Number:

✔ Personal Restraint Petition (PRP) Transfer Order

Notice of Appeal/Notice of Discretionary Review

(Check All Included Documents)

Judgment & Sentence/Order/Judgment
Signing Judge: _____

Motion To Seek Review at Public Expense

Order of Indigency

Filing Fee Paid - Invoice No: ___

Affidavit of Service

Clerk's Papers - Confidential Sealed

Supplemental Clerk's Papers

Exhibits - Confidential Sealed

Verbatim Report of Proceedings - No. of Volumes: ___
Hearing Date(s): _____

Administrative Record - Pages: ___ Volumes: ___

Other: _____

Co-Defendant Information:

No Co-Defendant information was entered.

Comments:

No Comments were entered.

Sender Name: Mary Tracy